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HISTORY OF DHARMAŚĀSTRA

(ANCIENT AND MEDIEVAL
RELIGIOUS AND CIVIL LAW)

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BY

MAHĀMAHOPĀDHYĀYA PANDURANG VAMAN KANE, M.A., LL.M.,
ADVOCATE, HIGH COURT, BOMBAY; SENIOR ADVOCATE,
FEDERAL COURT OF INDIA; FELLOW AND VICE-
PRESIDENT OF THE BOMBAY ASIATIC SOCIETY,
AUTHOR OF "HISTORY OF SANSKRIT
POETICS", ETC.

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PREFACE

The second volume of the History of Dharmaśāstra was published in the third quarter of 1941. In the Preface to that volume I held forth hopes that the next volume dealing with the remaining subjects comprised in Dharmaśāstra might be placed before scholars in about three years thereafter. The Great War was then being fought in Europe and it was generally believed that India would remain free from the fear of actual invasion. But such fond hopes were shattered by the sudden attack on Pearl Harbour by Japanese bombers on 7th December 1941. Japan gained rapid and phenomenal victories and within about three months from the attack on Pearl Harbour vast territories from the Philippines to Burma fell into the hands of the victors. Calcutta and Trincomalee were bombed. Serious fears were entertained about an invasion of the mainland of India by land, sea and air. There was great panic in such coastal cities as Madras, Bombay and Karachi. The matters uppermost in the minds of Government officials and the members of the public were A. R. P. measures, the recruiting of men for the army, navy and air force and the removal of families and valuables to places of safety in the interior. Important and rare books from the libraries of the Bombay Asiatic Society and of the University of Bombay were taken to distant places for reasons of security. During almost the whole of 1942 it was very difficult for me to work on the preparation of the third volume in the midst of a general atmosphere of panic caused by the fear of invasion and the removal of valuable reference books from Bombay. Owing to the war there has been great scarcity of paper and printing also has become very costly. I decided upon writing only on a few of the several subjects that remained to be dealt with and chose Rājadharmā, Vyavahāra and Sadācāra, the treatment of which is now placed before the public. Scarcity of paper and labour is responsible for the fact that this third volume has been in the press for nearly three years. The present volume increased in bulk beyond expectation. The fourth and last volume will deal with the following subjects: Pātaṅga, karmavipākā and prāyasocitta; antyesti, śauca and śrāddha; tīrtha; vrata; kṣā and mūhūrta; śānti; Paurāṇa dharmā; the influence of the Pūrvamīmāṃsā and other śāstras on dharmaśāstra; the religious and philosophical background of dharmaśāstra; the essentials of our culture, its future, the coming

social and other trends and their impact on the dogmas and ideals of Dharmasāstra. I am personally anxious to finish all the remaining work as early as possible. But looking to my age (I am nearly 67 now), to my ailments and to the number of subjects that remain to be dealt with, it is impossible for me to say when the next and last volume may be published. This volume also is full of quotations, refers to many inscriptions, judicial decisions and legislative enactments. The reasons for this have been stated at length in the Preface to the second volume and I do not desire to repeat them here. In the general index to the second volume full references to works like the *Manusmṛti* were not given, because such works were quoted on almost every page. But some critics found fault with this; therefore in the index to this volume full references to all works are inserted.

All that now remains is the pleasant duty of acknowledging my obligations to others. Bloomfield's *Vedic Concordance*, the *Vedic Index* of Professors Macdonell and Keith and several volumes of the *Sacred Books of the East* have been very useful in preparing this volume as in the case of the preceding one. I wish to mention specially the debt I owe to the late Mahamahopādhyāya Kamalakṛṣṇa Smṛtīrthā for his editorial work on twelve volumes on the different branches of dharmasāstra, which have been of great use to me in writing all the volumes of my History viz. *Haraṇatā*, *Viva daratnakara*, *Gṛhastharatnākara*, *Kṛtyaratnākara*, *Tīrthachintāmaṇi*, *Varṣakriyākaumudī*, *Dānakriyākaumudī*, *Śrāddhakriyākaumudī*, *Saddhikaumudī*, *Dandaviveka*, *Rājadharmakaustubha* and *Agastyasamhitā*. I am highly obliged to Paramahansa Svāmi Kevalānanda Sarasvatī of Wai for frequent help and guidance in solving some intricate problems of Dharmasāstra, to Prof. N. A. Gore, M.A. of Poona for help in the careful correction of proofs, to Tarkatīrthā Raghunāthasāstri Kojke of Lonavla and Mr. N. G. Chapekar, B.A., LL.B. (retired P.C. Sub-judge), of Badlapur for reading through the whole volume and suggesting some additions and corrections.

Assistance in various ways during the progress of the work for the last four years was very kindly rendered by a host of friends and acquaintances, among whom I should like to make special mention of Prof. H. D. Velankar, Dr. R. N. Dandekar, Dr. S. K. Belvalkar, Rao Bahadur Prof. Rangaswami Aiyangar, Dr. A. S. Altekar, Mr. P. K. Gode, Dr. Raghavan, Mr. S. N. Joshi of Bhārata-tilāsa-saṁśodhaka-maṇḍala at Poona, Mr. Bhabatosh

Bhattacharya (son of M. M. Kamalakṛṣṇa Smṛtīśrītha), Mr. S. L. Katre of Ujjain, Prof. A. M. Paramasivanandan of Panchaiappa College at Madras, the late Pandit Rangacarya Raddi. Thanks are due to all these and many others for help and interest in this volume. It need not be expressly stated that I alone am responsible for the views and mistakes contained in this volume. I sincerely thank the Manager of the Aryabhushan Press, Poona, for carrying out the work of printing with care and promptitude in spite of difficulties caused by war conditions and paper and labour shortage.

In a work bristling with thousands of quotations and references it is likely that many slips have escaped attention. The indulgence of the reader is sought for forgiveness in the matter of several misprints in the footnotes caused by loss or displacement of the parts of letters in the process of printing.

BOMBAY, }
1st October, 1946. }

P. V. KANE



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LIST OF ABBREVIATIONS EMPLOYED

- A. I. R. = All India Reporter of Nagpur
 Ait. Br. = Aitareya Brahmana
 All. = Indian Law Reports, Allahabad Series
 A. L. J. = Allahabad Law Journal
 Ap. = Āpastamba (generally the author of the Dharmasūtra is meant)
 Ap. Dh. S. = Āpastamba-dharmasūtra
 Ap. M. P. = Āpastamba-mantra-pāṭha
 A. S. W. I. = Archaeological survey of Western India
 Āsv. Gr. = Āśvalāyana-gr̥hyasūtra
 Baud. Dh. S. = Baudhāyana-dharmasūtra
 B. I. = Bibliotheca Indica series, Calcutta
 Bom. = I. L. Reports, Bombay Series
 Bom. G. = Bombay Gazetteer volumes
 Bom. H. C. R. = Bombay High Court Reports (vol. I-XII)
 Bom. L. R. = Bombay Law Reporter (edited by Ratanlal and Dhirajlal)
 B. O. R. I. } = Bhandarkar Oriental Research Insti-
 B. O. R. Institute } tute, Poona
 Br. = Smṛti of Bṛhaspati
 Br. Up. = Bṛhadāranyaka Upaniṣad
 B. R. W. W. = Beal's Buddhist Records of the Western world
 Cal. = Indian Law Reports, Calcutta Series
 Catur. = Caturvimsatimata
 Chān. Up. = Chāndogya Upaniṣad
 C. I. I. or } = Corpus Inscriptionum Indicarum (vol. I
 Corpus I. I. } relating to Inscriptions of the times of Aśoka,
 vol. II relating to Kusana Inscriptions and
 vol. III relating to Gupta Inscriptions)
 C. L. J. = Calcutta Law Journal
 Com. = Commentary or Commentator (according to context)
 Cr. ed. = Critical edition (of the Mahābhārata, Poona)
 C. W. N. = Calcutta Weekly Notes (Law Reports)
 D. B. = The Dāyabhāga of Jimūtavāhana
 D. C. = Dattaka-candrika

D. C. = Deccan College Collection (when mss. are concerned)

Dh. S. = Dharmasūtra

D. K. S. = Dāyakramasangraha of Śrīkrṣṇa

D. N. = Dattakamīnīmāṃsā of Nandapāṇḍita

E. C. = Epigraphia Carnatica

E. I. = Epigraphia Indica

F. B. = Full Bench (decision)

Fick } = The Social organization in North-east India in
Buddha's time (translated from German by
Dr. Shishirkumar Mitra, 1920)

Gaut. = Gautama-dharmasūtra

Gr. R. = Gṛhas̥tharatnākara of Candēśvara

H. D. } = History of Dharmasūtra

H. Dh. }

Hir. gr. = Hiranyakeśi-grhya-sūtra

I. A. = Indian Antiquary

I. A. } = Indian Appeals (Law Reports). The context
will always indicate whether I. A. stands for the
volumes of the Indian Antiquary or for the Law
Reports, Indian Appeals

I. H. Q. = Indian Historical Quarterly

I. L. R. = Indian Law Reports

Ins. = Inscription or Inscriptions

I. P. C. = Indian Penal Code

Jai. = Jaimini's Pūrvamīmāṃsāsūtra

J. A. O. S. = Journal of the American Oriental Society

J. A. S. B. = Journal of the Asiatic Society of Bengal

J. B. O. R. S. = Journal of the Bihar and Orissa Research
Society

J. R. A. S. = Journal of the Royal Asiatic Society (London)

Kām. = Kāmandakīya-nīti-sūtra

Kāt. = Smṛti of Kātyāyana reconstructed by P. V. Kane

Kauṭ. = Kautīliya's Arthasāstra

K. V. N. = Kalivarjyavinirnaya (ms)

L. R. I. A. = Law Reports, Indian Appeals (Privy Council)

Mad. = Indian Law Reports, Madras Series

Mark. = Mārkaṇḍeyapurāṇa

Medh. = Medhātithi, the oldest commentator of Manusmṛiti

- Mit. = Mitākṣarā on the Yājñavalkya-smṛti
 M. L. J. = Madras Law Journal
 Moo. I. A. = Moore's Indian Appeals (Reports
 N. or n. = footnote
 Nār. = Nārada-smṛti
 Nir. S. = Nirṇayasindhu
 Nitisāra = Kamandakīya-nīti-sāra
 N. I. A. = New Indian Antiquary, Poona
 Pāṇ. = Pāṇini's Aṣṭādhyāyī
 Par. Gr. = Pāraskara-grhya-sūtra
 Par. M. = Parāśara-Mādhaviya
 Patna = Indian Law Reports, Patna Series
 P. C. = Privy Council
 P. J. = Printed Judgments of the Bombay High Court
 Q. or q. = Quoted
 Raghu. = Raghuvamśa
 R. D. K. } Rajadharmakāṇḍa of Kalpataru (on p. 43
 Raja Dh. K. } = R. D. K. by mistake stands for Rajadharma-
 kaustubha)
 Rājadharmā-K. = Rājadharmakaustubha of Anantadeva
 Raja N. P. } Rājāniti-prakāśa (a part of the Viramītrodaya
 R. N. P. } of Mītramīśra)
 Rajat. = Rājataranginī
 Rg. = Rgveda
 Sam. K. = Samskāra-kaustubha
 Sam. Pr. = Samskāraprakāśa (a part of the Viramītrodaya
 of Mītramīśra)
 Śan. Gr. = Śāṅkhayana-grhya-sūtra
 Śat. Br. = Śatapatha-brāhmaṇa
 S. B. E. = Sacred Books of the East (series edited by Max
 Müller)
 S. I. I. = South Indian Inscriptions
 Sm. O. = Smṛticandrikā
 Sm. Kau. = Smṛti-kaustubha
 Sm. M. = Smṛtimuktāphala
 Śr. = Śrautasūtra
 S. V. = Sarasvatī-vilāsa

Śakra = Sukranitisāra

Tai. Ar. = Taittiriya Aranyaka

Tai. Br. = Taittiriya Brāhmaṇa

Tai. S. = Taittiriya Saṁhitā

Tai. Up. = Taittiriya Upaniṣad

T. L. L. = Tagore Law Lectures

Tr. = Translation or translated

Vaj. S. = Vajasaneya-saṁhitā

Vas. = Vasiṣṭha-dharma-sūtra

V. C. = Vivāda-cintāmaṇi

V. M. } = Vyavahāra-mātrkā of Jimūtavāhana (except

V. Mātrkā } on p. 709)

V. Mayūkha = Vyavahāramayūkha (In a very few places
such as on p. 709 through oversight V. M.
stands for V. Mayūkha)

V. Nir. } = Vyavahāranirnaya of Varadarāja

V. Nirṇaya } = Vyavahāranirnaya of Varadarāja

V. P. = Vyavahāraprakāśa (a part of the Viramitrodaya
of Mitrāmīśra)

V. R. = Vivādaratnākara of Candēśvara

Viṣṇu } = Viṣṇudharmasūtra

Viṣṇu Dh. S. } = Viṣṇudharmasūtra

V. T. = Vivādatāṇḍava of Kamalākara

Vy. Nir. } = Vyavahāranirnaya of Varadarāja

Vy. Nirṇaya } = Vyavahāranirnaya of Varadarāja

Yāj. = Yājñavalkyasmṛti

अथर्व = अथर्ववेद

अथर्वशास्त्र = अथर्ववेदशास्त्र

आप. व. सू. = आपस्तम्बस्मृत्युक्त

आप. म. पा. = आपस्तम्बमन्वाद्युक्त

इ. = इन्द्र

ऐ. शा. = ऐतरेयब्राह्मण

कालिकार्थवि. = कालिकार्थविनिर्णय (ms)

कात्या. = कात्यायनस्मृतिसारोद्धार

कात्या. धी. = कात्यायनधौतसूत्र

काम } = कामन्दकीयनीतिसार

कामन्दक } = कामन्दकीयनीतिसार

कुत्स. = कुत्सराजाक्षर

कौ. } = कौटिलिय अर्थशास्त्र
कौटिलिय

गृह. र. = गृहसंस्कारनामक

गौ. = गौतमधर्मसूत्र

चतुर्वि. = चतुर्विंशतिमत

छा. उ. = छान्दोग्योपनिषद्

जै. = जैमिनीयपूर्वमीमांसासूत्र

जै. न्या. मा. = जैमिनीयन्यायमास्यविरचित

तै. आ. = तैत्तिरीयारण्यक

तै. आ. = तैत्तिरीयब्राह्मण

तै. सं. = तैत्तिरीयसंहिता

दत्त. च. = दत्तकचन्द्रिका

दत्त. मी. = दत्तकमीमांसा

नारद. = नारदस्मृति

नीतिवा. } = नीतिवाक्यामृत
नीतिवाक्या.

नीतिसार = कामन्दकीयनीतिसार

परा. मा. = पराशरमाधवीय

पा. = पाणिनि's अष्टाध्यायी

कुप. } = कुपभूषण
कुपम्.

बृह. = बृहस्पतिस्मृति (as quoted in digests)

बृह. उप. = बृहदारण्यकोपनिषद्

बृहत्सं. = बृहत्संहिता

बौ. ध. } = बौधायनधर्मसूत्र
बौ. ध. सू.

बौ. धी. = बौधायनश्रौतसूत्र

मद. पा. = मदनपारिजात

मनु. = मनुस्मृति

मिता. = मिताक्षराटीका of विश्वानेश्वर

मीमांसाकौ. } = मीमांसाकौस्तुभ of राजदेव
मी. कौ.

मेधा. = मेधातिथि's साध्य on मनुस्मृति

या. or याज्ञ. = याज्ञवल्क्यस्मृति

रा. ध. कौ. or राजध. कौ. or राजधर्मका. = राजधर्मकौस्तुभ

रा. नौ. प्र. or राजनी. प्र. or राजनीतिप्र. = राजनीतिप्रकाश of मित्रप्रिय

राज. र. or राजनीतिर. = राजनीतिरत्नाकर of चण्डेश्वर

वा. सं. = वाचसनेयसंहिता

वि. वि. = विवादविन्यासणि

वि. ता. = विवादताण्डव of कमलाकर

वि. र. = विवादरत्नाकर

व्यव. त. = व्यवहारतत्त्व of रघुनन्दन

व्य. नि. or व्यव. नि. = व्यवहारनिर्णय

व्य. प्र. = व्यवहारप्रकाश of मिश्रमिश्र

व्य. म. or व्यव. मयूख = व्यवहारमयूख

व्य. मा. = व्यवहारमातृका

व्यव. सा. = व्यवहारसार

शक्र.
शकनी. } = शकनीतिसार
शकनीति.

सं. कौ. = संस्कारकौस्तुभ

सत्या. श्रौ. = सत्याषाढश्रौतसूत्र

स. वि. = सरस्वतीविलास

स्मृतिच. = स्मृतिचन्द्रिका

स्मृतिमु. = स्मृतिमुक्ताफल

CHRONOLOGICAL TABLE.

(of some important works and authors referred to in this volume)

N. B. — Some dates, particularly of ancient works, are more or less conjectural.

- 4000 B. C. — 1000 B. C. — The period of the Vedic Samhitās, Brāhmaṇas and Upaniṣads. Some hymns of the Rgveda, the Taittirīya Samhitā and Brāhmaṇa and the Atharvaveda may possibly go back to a period earlier than even 4000 B. C. and some of the Upaniṣads (even from among those that are regarded as the earliest ones) may be later than 1000 B. C.
- 800 B. C. — 500 B. C. — The Nirukta.
- 800 B. C. — 400 B. C. — The principal smṛta sūtras (of Āpastamba, Āśvalāyana, Baudhāyana, Kātyāyana, Satyāsādha and others) and some of the Grhyasūtras (such as those of Āpastamba and Āśvalāyana).
- 600 B. C. — 300 B. C. — The dharmasūtras of Gautama, Āpastamba, Baudhāyana, Vasistha and the Grhyasūtras of Pāraskara and a few others.
- 600 B. C. — 300 B. C. — Pāṇini.
- 500 B. C. — 200 B. C. — Jaimini's Pūrvamīmāṃsāsūtra.
- 300 B. C. — Vararuci Kātyāyana, author of Vārtikas on Pāṇini.
- 300 B. C. — 100 A. D. — Arthashastra of Kauṭilya.
- 150 B. C. — The Mahābhāṣya of Patañjali.
- 200 B. C. — 100 A. D. — Manusmṛti.
- 100 A. D. — 300 A. D. — Yājñavalkyasmṛti.
- 100 A. D. — 300 A. D. — Viṣṇudharmasūtra.
- 100 A. D. — 400 A. D. — Nārada-smṛti.
- 200 A. D. — 500 A. D. — Sabara, com. of Jaimini.
- 300 A. D. — 500 A. D. — Brhaspatismṛti on Vyavahāra (not yet found. Extracts translated in S. B. E. vol. 33).
- 300 A. D. — 600 A. D. — Some of the extant Purāṇas, such as Vāyu, Viṣṇu, Mārkaṇḍeya, Matsya, Kūrma.

- 400 A. D. — 600 A. D. — *Kātyāyanasmṛti* on *Vyavahāra* (not yet found. Extracts collected by me and translated in English).
- 400 A. D. — 600 A. D. — *Kāmandakiyanitisāra*.
- 505 A. D. — 587 A. D. — *Varāhamihira*, author of *Bṛhatsamhita*, *Bṛhajjātaka*, *Pañcasiddhāntikā* and other works.
- 600 A. D. — 650 A. D. — *Bāṇa*, author of the *Kādambarī* and the *Harsacarita*.
- 650 A. D. — 750 A. D. — *Kumārīlabhaṭṭa*, author of *Śloka-vārtika*, *Tantravārtika* and *Tup-tikā*.
- 600 A. D. — 900 A. D. — Most of the *smṛtis* and some of the *Purāṇas*.
- 788 A. D. — 820 A. D. — *Śaṅkarācārya*, the great *Advaita* philosopher.
- 800 A. D. — 850 A. D. — *Viśvarūpa*, com. of *Yājñavalkyasmṛti*.
- 900 A. D. — *Medhatithi*, com. of *Manusmṛti*.
- 900 A. D. — 1100 A. D. — *Parthasārathīmīśra*, author of *Śāstra-dīpikā*, *Tantraratna*, *Nyāyaratnākara*.
- 966 A. D. — *Utpala*, com. of *Bṛhat-samhita* and *Bṛhajjātaka*.
- 1000 A. D. — 1055 A. D. — *Dhāreśvara* (Bhoja).
- 1070 A. D. — 1100 A. D. — *Vijñāneśvara*, the author of the *Mītakṣarā* com. on *Yājñavalkya*.
- 1080 — 1140 A. D. — *Govindarāja*, author of a com. on *Manusmṛti*.
- 1100 — 1150 A. D. — *Lakṣmidhara*, author of a large digest called *Kṛtya-kalpataru* or simply *Kalpataru*.
- 1100 — 1150 A. D. — *Jimūtavāhana*, author of *Dśyabhāga*, *Kālaviveka* and *Vyavahāramātrkā*.
- 1114 — 1183 A. D. — *Bhāskarācārya*, author of *Siddhānta-siromani*, of which *Līlāvati* is a part.
- 1125 A. D. — *Aparārka*, author of a com. on the *Yājñavalkyasmṛti*.
- 1127 — 1138 A. D. — *Mānasollāsa* or *Abhilasītarthacintāmaṇi* of *Someśvaradeva*.
- 1150 — 1160 A. D. — *Rajataranginī* of *Kalhana*.
- 1150 — 1200 A. D. — *Smṛtyarthasāra* of *Śrīdhara*.

- 1200 — 1225 A. D. — *Smṛticandrikā* of Devaṇḍabhṭṭa.
- 1150 — 1300 A. D. — Haradatta, com. on *Gautamadharmasūtra* and *Āpastambadharmasūtra*.
- 1150 — 1300 A. D. — Kullūka, com. of *Manusmṛti*.
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- 1790 A. D. — Dharmasindhu of Kāśīnātha.
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Vasudevan v. Secretary of State 660.	46 Bom. 213	327n.
Vellaiyappa v. Natarajao 809n. 810.	48 Bom. 203	763n.
Venkata Narasimha v. Rangayya 693n.	60 Bom. 311	450.
Venkatarayudu v. Sivaram Krishnayya 622n.	31 Bom L. R. 129	327n.
Venkayamma v. Venkataramana- yamma 377n.	31 Bom. L. R. 1030	11.
Venku v. Mahalinga 972n.	47 Bom. L. R. 3	602n, 763n, 814.
Virangnada v. Yellappa 756.	1 Cal. 1	602n.
Viragava v. Ramalinga 681n.	6 Cal. 119	723n.
Viraswami v. Appaswami 431n.	19 Cal. 91	602n.
Viswasundara v. Somasundara 684.	28 Cal. 194	602n.
Vithalai v. Pandu 603n.	39 Cal. 862	447n.
Vithal v. Anant 972n.	47 Cal. 274	327n.
Vithal v. Balu 793n.	L. L. R. (1940) Cal. 415	818.
Vithal v. Prahlad 443n. 608n.	61 A. 88	450n.
Vithappa v. Savitri 718n.	71 A. 115	708n.
Vithu v. Govind 708.	171 A. 128	602.
Vyakunta v. Government of Bombay 329n.	261 A. 113	677n, 682.
Vyas Chimanlal v. Vyas Ramchandra 676, 678, 796n.	411 A. 290	723n, 758.
Waithai v. Heerbai 683.	421 A. 208	751n.
Waman v. Balaji 972n.	511 A. 129	449n.
Wodeyar v. Ganapati 971n.	531 A. 163	763n.
Yadav v. Namdeo 670.	581 A. 402	603.
Yamunabai v. Manohai 806n.	5 Mad. H. C. R. 150	381n.
Yashvantrao v. Kashibai 810n. 811n.	1 Mad. 306	602n.
14 All. 67	4 Mad. 250	581n.
17 All. 523	8 Mad. 290	710n.
38 All. 438	11 Mad. 287	760n.
29 All. 667	23 Mad. 16	601.
31 All. 434	27 Mad. 300	579n.
34 All. 698	30 Mad. 406	760n.
1 Bom. 121	31 Mad. 350	427n.
2 Bom. 373	34 Mad. 68	602n.
4 Bom. 37	37 Mad. 458	447.
5 Bom. 99	38 Mad. 556	622n.
12 Bom. 26	39 Mad. 298	876.
16 Bom. 39	40 Mad. 925	574n.
26 Bom. 163	42 Mad. 711	450.
26 Bom. 206	53 Mad. 84	619n.
32 Bom. 348	53 Mad. 549	427n.
32 Bom. 562	58 Mad. 126	622n.
	58 Mad. 238	760n.
	A. I. R. (1943) Mad. 327	592n.
	5 Patna 646	710n.
	23 Patna 599	576n.
	P. J. (for 1874) p. 250	867n.

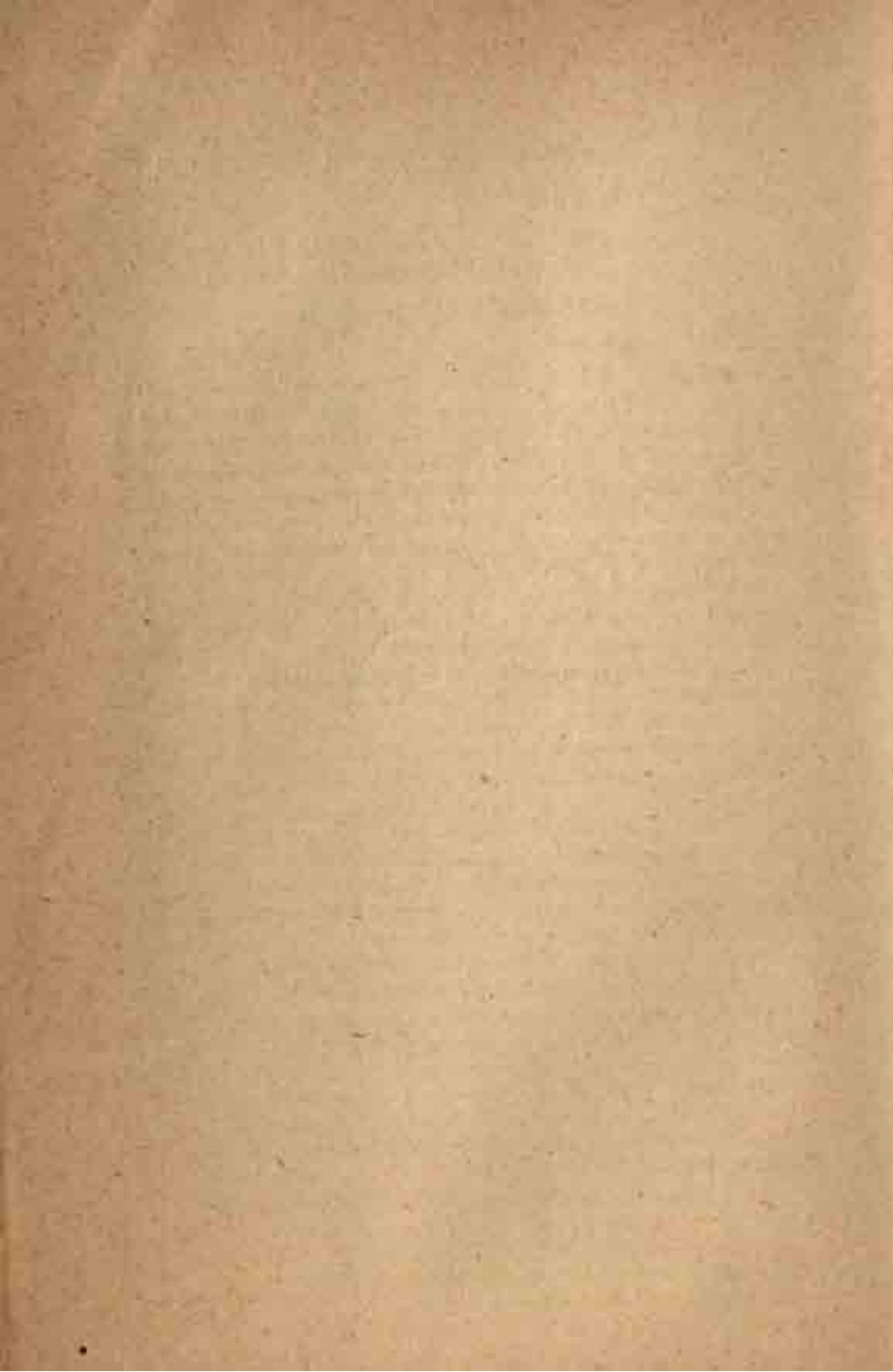
ADDITIONS AND CORRECTIONS

(A few misprints due to the loss or displacement of such loose parts as *anusvāras* have not been specified, since they can be easily detected.)

Page	Line or note	
22	n. 24	read विष्णुधर्मसूत्र III. 95 ;
31	n. 41	read शान्ति 59 for शान्ति 9
57	n. 70	The verse दुष्टस्य दष्टः &c. occurs also in बराहमिहिर's योगयात्रा 2. 33
57	n. 70	read सर्वकर्मणः
62	l. 3	read 'Śāntiparva (56. 45-46).
72	l. 31	read 'option for'
143	n. 184	read 'Śābara' in line 3
147	l. 16	Add 'Br. Śaṁ. 23. 2 is: इस्तविशालं कुण्डकमाधिकृत्याम्बुप्रमाणनिर्देशः । पवासात्तल- मावकमनेन मितुषाञ्जले पतितम् ॥'. उपल explains 'इस्तविशालं कुण्डकं वर्पति देवे संस्थाप्य तत्र बज्जलं पतति तन्मापयेत् । तद्यदि पल्लवतद्वयं भवति तदा द्रोणो दृष्टः'. On Br. Śaṁ. 21. 32 उपल quotes a verse of 'पराशर' समं विशाङ्गुलनाहं दिक्षुष्काङ्गुलीच्छ्रितं । भाण्डे वर्पति संपूर्णे ज्ञेयमावकवर्षणम् ॥'. This shows the dimensions of a vessel used as a rain-gauge.
182	n. 230	read in line 3 राजधर्मको.
183	l. 34	read 'Rājadharmakaustubha'.
183	l. 38	" "
193	n. 250	read संभृतानि कनककरिदुरगं
227	n. 306	add at end 'Compare योगयात्रा 5. 15 'एकतल्ल सकलानि निमित्तान्येकतल्ल मनसः परिधादिः । चेतसोऽस्ति सहजाजग्ने भीमोऽस्ति विजयाजग्नेतुः ॥'
242	l. 14	read 'Manu VIII 1.' for 'Manu VIII 1.'

Page	Line or note	
258	n. 335	read in last line स्मृतिच.
265	l. 29	read 'padas'
379	n. 395	read सन्धैः
382	l. 6	read <i>patram...pratta</i>
405	last line	put a full stop after 'hanged'.
414	n. 669	read कृष्णस्मिन्
423	n. 690	read गुणैर्व्यवस्था
533	n. 982	should we read कथमकुर्वन् for कथं कुर्वन्?
538	n. 995	read in first line वृत्
542	n. 1009	read in second line वृत्
570	n. 1069	read पैतामहे
586	n. 1104	read in line 9 च for च.
588	n. 1111	read in line 3 दुर्गोदीत्याह
605	n. 1142	put a full stop after बोधावन in l. 5.
"	"	read in line 9 निरिन्द्रिया ह्यमन्त्राश्च
627	n. 1197	read न स्वयत्वे अनुष्ठेया
651	n. 1235	read in line 1 एक एवैरसः and in line 2 वि. र.
659	n. 1248	read गौणपुत्राणां
"	n. 1250	read in line 2 कुर्वन्
677	n. 1277	add at the end 'For the words श्रुतेन जुहोति श्रुतेन व्रतने क्रियते' vide शतपथ ब्राह्मण II. 5. 2. 23; vide ते वा. I. 6. 4 for two वेदिस in वरुणप्रपास and बी. श्री. 5. 5.
695	n. 1321	Add at end 'For अर्थम...वहिर्वेदि compare ते. सं. VI. 6. 4 and बी. श्री. सू. 4. 2.
702	l. 27	read ' (Śakuntala Act VI).
706	n. 1349	read पत्नीनामेशमागित्वम्.
"	l. 15	read 'her deceased sonless and separated husband's wealth'.

Page	Line or note	
751	l. 30	read after 'British rule' the words 'the widows of gotraja sapindas'.
776	n. 1499	read in l. 2 सुल्लवेन
781	n. 1509	read in last line स्वातन्त्र्येण
804	n. 1561	Add at the end 'Recently the Indian Legislature passed Act XIX of 1946 which confers on Hindu married women the rights to separate residence and main- tenance as against the husbands in certain circumstances'.
846	l. 28	read 'mother'
897	n. 1762	read in line 7 'Institute' for 'Society'.
936	last line	read 'naugamanābhāve'.



RAJADHARMA

(GOVERNMENT AND STATECRAFT)

CHAPTER I

Rajadharma has been a subject of discussion in works on dharmaśāstra from very ancient times. The Āp. Dh. S. II. 9.25.1 says 'The general and special *dharma*s of all varnas have been explained: but now we shall declare the dharma of a king in particular'. Āp. then states that the king should cause to be built a capital and a palace, the gates of which both should face the south; that the palace should be in the heart of the capital; that in front of the capital there was to be a hall called 'āman-trāpa' (hall of invitation); that to the south of the town there was to be an assembly house with doors on the north and south. Āp. requires that in the king's realm no brāhmana should suffer hunger, sickness, cold or heat; Āp. gives regulations about the assembly house and about persons who were to be allowed to engage in gambling; he prescribes that (the exercise in) arms, dancing, singing and music should not go on anywhere except in the houses of the king's servants, that the king was to see that there was no danger from thieves in villages and forests, that the king should donate fields and money to brāhmanas according to their worth without detriment to his servants, that the king who meets death in recovering the property of brāhmanas and other warlike persons who meet death in fighting for a similar worthy cause reap the merit of a sacrifice (i. e. reach heaven as reward); that the king should appoint in towns and villages officers and their subordinates, who are pure and truthful, for the protection of the subjects against thieves and who are to be made to make good what is stolen; that they are to collect lawful taxes for the king from the people except from learned brāhmanas, women of all castes, minors, students staying with teachers and ascetics fulfilling the rules of their order, śūdras who do menial work for the higher castes (such as washing their feet), persons that are blind, deaf or dumb. Āp. then lays down punishments for adultery and rape, for slander and defamation, for manslaughter, for theft and appropriation of another's land, for breach of contract to cultivate the field of another, for a herdsman leaving his herd or negligently allowing

it to perish. He states that if the king does not punish the guilty he incurs sin, that in disputes judges should be men of learning, clever and fulfilling their duties, that witnesses were to tell the truth and were to be punished if they be untruthful. It will be noticed how *Āp.* briefly covers the whole field of *rājadharmā*. In the *Śāntiparva* of the *Mahābhārata* *rājadharmā* is dealt with at great length in chapters 56-130 and to some extent in 131-172. The *Manusmṛti* also states at the beginning of chap. VII (1) that it will expound *rājadharma*s. That great literary activity on the science and art of government went on for many centuries before the Christian era follows from several considerations. The *Anuśāsanaparva* (chap. 39.8) speaks of the *śāstras* composed by *Brhaspati* and *Usanas*. The *Śāntiparva* (58.1-3) names as expounders of *rājāśāstra* *Brhaspati*, *Bharadvāja*, *Gaurāśira*s, *Kāvya*, *Mahendra*, *Manu* *Prācetasā* and *Viśalakṣa*. *Śāntiparva* (102.31-32) opposes the view of *Sambara* to that of *Ācāryas*¹. The *Arthashastra* of *Kautilya* mentions five schools (viz. those of the *Mānavas*, the *Bārhaspatyas*, the *Auśanāsas*, the *Parāśaras* and the *Āmbhīyas*), seven individual teachers (V. 5, and I 8) only once (viz. *Bahudantīputra*, *Dīrgha* *Cārāyaṇa*, *Ghotamukha*, *Kapinka* *Bhāradvāja*, *Kātyāyana*, *Kiñjalka*, *Pisūnaputra*), and several times mentions the views of *Bhāradvāja*, *Kaunapadanta*, *Parāśara*, *Pisūna*, *Vātavyādhi*, *Viśalakṣa*. *Kautilya* also cites at least 53 times the views of *Ācāryas*, almost in every case for dissent. *Śānti* 103.44 refers to a *Bhāṣya* on *rājāśāstra*. Is it possible to see in this a reference to one out of the *bhāṣyakāras* indicated in the verse appended at the end of the *Kautilya* or to the *Kautilya* itself? Another fact indicative of the systematization of the science of government is that in the *Mahābhārata*, the *Rāmāyaṇa*, *Manu* and *Kautilya* ideas expressed by numbers had already been stereotyped long before those works were written viz. such as *saptāṅga rājya* (State with seven constituent elements), *sādgūṇya* (the six ways of policy viz. alliance, declaration of war &c.), three *śaktis*, the four *upāyas* (*sāma*, *dāna*, *bheda*, *danda*), *aṣṭavarga*, and *pañcavarga* (*Manu* VII. 155), the 18 and 15 *tirthas* (*Sabbhāparva* 5.38)². For detailed information

1. मन्वते कर्षपिरवः तु लमा साध्वीति शम्बरः । असम्भवे तु यदाह मन्वेति यदुक्तिं पुनः ॥
नैतद्व्यासस्यवाचायां न च साधुनिर्द्देशम् । शान्ति 102. 31-32.

2. दृष्टव्यमसत्तुर्वर्गसप्तधर्मश्च तत्परा । अष्टवर्गं विवर्गं च विद्वान्निबन्ध रावण ॥ कुल्ले
विद्वान्निबन्धेन हया यदुक्तिमण्डलम् । अयोध्याकाण्ड 100. 68-69. दृष्टवर्ग means the
ten *avyasas*.

about the Rājasastras of Brhaspati, Usanas, Bhāradvāja culled from the Mahābhārata and other ancient works *vide* my paper on them in the Journal of the University of Bombay, vol. XI part 2 pp. 73-83, 1942.

The fulfilment of their duties and responsibilities by rulers was of paramount importance to the stability and orderly development of society and to the happiness of individuals in the State and therefore one often finds that rājadharmā is said to be the root of or the quintessence of all dharmas. Śāntiparva (63.25) states 'know that all dharmas are merged in rājadharmā; that rājadharmas are at the head of all dharmas' and (141.9-10) 'the welfare, good rains, sickness, calamities and death among people owe their origin to the king'. It was the king's duty to see that the people in his kingdom acted according to the rules laid down in the smṛtis for the several varṇas and āśramas, to administer justice and to interfere when his help was sought for by a *paṇḍit* (assembly of learned men) in enforcing the *prāyaścitta* (penance) prescribed for various lapses. *Vide* Gautama X. 7-8, XI. 9-11, Āp. Dh. S. II. 5. 10. 13-16¹, Vasiṣṭha 19. 1-2, Viṣṇu III. 2-3, Nārada (prakīrṇaka, 5-7 and 33-34), Śāntiparva 77.33 and 57.15, Matsyapurāṇa 215.63, Mārkaṇḍeya-purāṇa 27.28 and 28.36 and H. Dh. vol. II p. 965. Therefore it may be said with truth (as done by the Mahābhārata) that *rājadharmā* was the highest goal of all the world, that it comprehended within itself all rules of *ūcāra*, *vyavahāra* (administration of justice) and *prāyaścitta* (penance). It is on account of this all-pervading influence of government or royal power that the Mahābhārata frequently emphasizes that the king is the maker of his age, that it is he who can usher a golden age or an age of strife and misery for the country². The Śukranītisāra (I.

3. एवं धर्मात् राजधर्मेषु सर्वोत्सर्गवस्थं संगतीनां विदोष ॥ ... सर्वो विद्या राजधर्मेषु युष्माः सर्वे लोका राजधर्मं प्रविष्टाः । सर्वे धर्मा राजधर्मपञ्चामाः । शान्तिपर्व 63. 25, 26, 29; राजमूला महाभाग योगसेमस्तुतयः । प्रजास्तु स्यादपश्येव मरणं च मरणानि च ॥ कुतं वेता ह्यपरे च कालश्च भरतर्षभ । राजमूला इति मतिर्मम भास्वच्च संशयः ॥ शान्ति 141. 9-10; सर्वस्य जीवलाकरं राजधर्मः परावणम् । शान्ति, 56. 3.

4. आप. ध. सू. II. 5. 10. 13-16 तस्य चेच्छास्त्रमतिपयवर्तेत् राजानं वमयेत् । राजा दुरोहितं धर्माधिकृत्य । स बाह्यानाञ्चिदुज्जपात् । वदविशेषेण वधद्वारापचर्चं नियमैश्च शोषयेत् ।

5. कालो वा आरब्धं राज्ञो राजा वा कालकारणम् । इति ते संशयो मा पूज्यानां कालस्य कारणम् ॥ उद्योग 132. 16 and शान्ति 69. 79; कुतं वेता ह्यपरे च कालश्च भरतर्षभ । राजदुष्टानि सर्वाणि राजैव युगयुगपते ॥ ... राजैव कर्ता भूतानां राजैव च विनाशकाः । शान्ति, 91. 6 and 9; तच्च वेत्सेवमुद्योत धर्मं राजर्षिर्होषिते । लोकस्य संस्था न भवेत्तर्षभ च स्वाकुलीभवेत् ॥ शान्ति, 56. 6; युगवर्त्तको राजा धर्माधर्ममशिक्षणात् । युष्मानां न प्रजानां न दोषः किन्तु सुपर्य तु ॥ शुक्लोत्तिसार IV. I. 60.

59-60) remarks that one should learn from śāstra what are good and evil actions, give up evil deeds and perform good ones and that the king is hence declared to be the cause of (good or evil) times according as he does good or evil acts. Śukra IV. 1, 60 states that the king is the prompter of his age.

Though rājadharmā was thus an integral part of dharmaśāstra and was one of the most important subjects therein, yet apart from the works on dharmaśāstra separate treatises dealing with rājadharmā alone came into existence in very early times. Śāntiparva (chap. 59) states that originally in the Kṛta age there was no king nor punishment, that then *moha* (delusion), greed and lust entered men, that in order to provide against the complete destruction of dharma, Brahmā composed a work in one hundred thousand chapters on dharma, artha, kāma and mokṣa (verses 30 and 79); that part of this work on Nīti (science of government) was abridged by Śaṅkara Viśālākṣa (verse 80, and so it was called Vaiśālākṣa) into 10000 chapters, that Indra studied it and reduced it to 5000 chapters (and the work was called Bāhūdantaka, verse 83), that it was compressed into 3000 chapters by Bṛhaspati (and so was called Bārhaspatya) and that Kāvya (Uśanas) reduced the work to 1000 chapters. The Kāmasūtra (I 5-8) contains a somewhat similar story that Prajāpati composed a work in one hundred thousand chapters, that Manu abridged it as regards dharma, Bṛhaspati as regards *artha* and Nandi abridged in 1000 chapters the science of erotics. The Śāntiparva (69) gives (verses 33-74) a summary of the contents of the work of Brahmā on rājadharmā which remarkably agrees with the principal topics of the Kautīliya.

The Nītiprakāśikā (I 21-22) states that Brahmā, Mahesvara, Skanda, Indra, Prācetasā Manu, Bṛhaspati, Śukra, Bhāradvāja, Veda-Vyāsa, Gaurasīras were the expounders of Rājāśāstra, that Brahmā composed a work on rājāśāstra in 100000 chapters, which was gradually reduced in size by each of the above-mentioned founders until Gaurasīras reduced it to 500 chapters and Vyāsa to 300. The Sukranītisāra (I 2-4) states that Brahmā composed nītiśāstra in 100000 verses, which was subsequently abridged by Vasistha and others (including Śukra).

It is interesting to note the names given to the science of government. The most appropriate word is 'rājāśāstra' and it is employed by the Mahābhārata, which speaks of Bṛhaspati, Bhāradvāja and others as 'rājāśāstra-prapetārah' (vide p. 2 above). The Nītiprakāśikā (I 21-22) also dub the divine and human

writers on government 'rājasāstrāṇām prañetārah.' The same word is employed by such ancient classical writers as Aśvaghoṣa in his *Buddhacarita* (I 46).⁶ The first verse in Prof. Edgerton's reconstructed *Pañcatantra* performs obeisance to Manu, Brhaspati, Sukra, Parāśara and his son and Cānakya as the authors of *urpaśāstra* (science of kingship). Another name is *Dandanīti*. The *Śāntiparva* (59. 78) explains why *Dandanīti* is so called viz. 'this world is led (on to the right path) by danda (the power of punishment, sanction) or this science carries (or sets forth) the rod of punishment; hence it is called *dandanīti* and it (faces) pervades the three worlds.' In *Śāntiparva* 69. 76 it is stated that 'Dandanīti controls the four varṇas so as to lead them on to the performance of their duties and when it is employed by the ruler properly, it makes them desist from adharma.'⁷ *Śānti* 63. 28 identifies *Dandanīti* with *rājadharmas*. The *Kauṭīliya* (I. 4) explains 'Danda is the means of the stability and welfare of Ārvikṣikī, Trayī (the three Vedas) and Vārtā; the rules that treat of danda are called *dandanīti*, which is a means of acquiring what has not been acquired, which safeguards what is acquired, which increases what is guarded and distributes (increased wealth) among the deserving.'⁸ The *Mahābhārata* says (*Śānti* 69. 102) that a wise kṣatriya, putting *dandanīti* in front, should always desire to acquire what is till then unacquired and should guard what is acquired.⁹ The *Nītisāra* (II 15) says that *dama* (control or chastisement) is called *danda*, the king is called 'danda' because control is centered in him; that the *nīti* (rules) of *danda* is called *dandanīti* and *nīti* is so called because it leads (people).¹⁰ *Śānti* (69. 104) says that *dandanīti* is the special concern of the kṣatriya (rājan). It is said in the *Vanaparva* 150. 32 that without *Dandanīti* this

6. यद्वाजशालं सुदुरद्विरा वा न चकतुर्वशकरावृषी तौ ॥ तयोः सुतौ तौ च ससर्जतु-
ल्लभातेन शुक्रश्च दृष्टस्तथ ॥ इत्युचरित I. 46.

7. दुण्डेन नीयते चेदं दुण्डं नयति वा पुनः । दुण्डनीतिरिति कथाया त्रिहोकाग्रभिष-
र्त्ते ॥ शान्तिपर्व 59. 78: दुण्डनीतिः स्वधर्मस्य आतुर्येण निपद्यति । यदुक्ता स्वामिना
सम्पदधर्मयो निपद्यति ॥ शान्ति. 69. 76. स्वधर्मस्य; is in the dative and अधर्मस्य;
in the ablative.

8. आन्वीक्षिकीचर्यावार्तानां योगसेमसाधनो दुण्डः । तस्य नीतिर्दुण्डनीतिः । अदृष्ट-
लभार्था लब्धपरिरक्षणी रक्षितनिवर्धनी दुण्डस्य नीयेषु मतिपादनी च ॥ अर्थशास्त्र I. 4 (p. 9).

9. दुण्डनीतिं दुरदृष्ट्य विज्ञानम् अविद्यः सदा । अमघातं च लिप्सेत लब्धं च परि-
पालयेत् ॥ शान्ति. 69. 102.

10. दुमो दुण्ड इति कथावस्तावत्पादुण्डो महीपतिः । तस्य नीतिर्दुण्डनीतिर्नयनानी-
तिरुच्यते ॥ नीतिसार II. 15 and शुक्र. I. 157 (latter reading तस्मादुण्डो &c.)

whole world would break all bounds. Vide also Śānti 15.29, 63.28, 69.74 ff (eulogy of Dandaniti). Dandaniti is said to be the support of the world (Śānti 121.24) and to have been produced by Devī Sarasvatī (Śānti 122.25.)

Arthaśāstra has been a synonym for dandaniti. When the Āp. Dh. S. II 5.10.16 requires the king to appoint as purohita a brāhmaṇa well-versed in dharma and artha, it is clear that Āpastamba has in view dharmaśāstra and arthaśāstra. The Anuśāsanaparva says that Brhaspati and others composed arthaśāstras (39.10-11). Droṇaparva 6.1 speaks of a science of artha composed by Manu (*Mānavi arthavidyā*). Vide Jayaswal in 'Manu and Yājñavalkya' (pp. 5, 7, 16, 25, 26, 41, 42, 50, 84, for Manu and Artha). Śānti (71.14) states that a king whose sole concern is with arthaśāstra does not secure dharma and kama and that all the wealth of such a king vanishes in (the pursuit of) improper objects. Vide Śānti 302.109 which speaks of arthaśāstra as resorted to by the best among kings. The Rāmāyana (II 100.14) states that Sudhanvā, Upādhyāya of Rāma, was an adept in arthaśāstra. The arthaśāstra of Kautīliya starts with the statement that it is the quintessence of all the arthaśāstras composed by former teachers in the whole world and at the end Kautīliya states that that śāstra which is a means of acquiring and guarding the earth is arthaśāstra. This mentions two of the four objects of dandaniti stated in the Kautīliya itself (as shown in n. 8 above). Only two objects are mentioned by Kautīliya (as in Śānti 69.102) since they are the first and principal ones to be gained by the practice of the science of government. It is not meant that there was, as regards the topics to be dealt with, any distinction between Dandaniti and Arthaśāstra. The four objects mentioned by Kautīliya are always placed before the ksatriya by Manu (VII 99-100), Śānti 102.57 and 140.5, Yāj. I 317, Nitisāra I 18 (while I 8 mentions only two purposes of rājavidyā). At the end (XV.1) Kautīliya states 'artha is the sustenance of human beings, that is, the earth peopled by men. That śāstra which is a means of acquiring and guarding that earth is arthaśāstra.' Men derive their sustenance from the earth and all wealth also arises from the earth. Mr. Jayaswal (Hindu Polity p. 5) is not right when he translates 'Artha is human population.' Vide U. Ghoshal's 'Hindu Political Theories' p. 74 n and p. 76 for the various interpretations of this passage by Jayaswal and others. Authors a few centuries later than both the Mahābhārata and the Kautīliya treat the two as

identical. Dandin in his *Daśakumāracarita* (VIII.) expressly says that Vignugupta composed his work on dandanīti for the Maurya king in 6000 ślokaś, though the Kautiliya states at the very beginning that the work is an arthaśāstra. Dandin in the same context refers to 'Arthaśāstras' as helping to polish the intellect' and speaks of some of the predecessors mentioned by Kautiliya as writers on the śāstra (viz. the Arthaśāstra).¹¹ The *Amarakośa* treats the two as identical.¹² Medhātithi on *Manu* VII 43 holds that the word 'Dandanīti' therein refers to the works of Cānakya and others. The *Mitākṣarā* on *Yāj.* I. 313 paraphrases dandanīti by arthaśāstra and on *Yāj.* I. 311 explains dandanīti as the lore useful in the acquisition and guarding of wealth (only the two objects mentioned by Kautiliya in connection with arthaśāstra). According to the *Sukranitisāra* (IV. 356) 'that is said to be arthaśāstra in which instruction about the conduct of kings and the like is given without coming in conflict with Śruti and Smṛti and in which the acquisition of wealth with great skill is taught'.

The words arthaśāstra and dandanīti are applied to the science of government from two different points of view. Artha is defined in the *Kāmasūtra* (I. 20) as 'education, lands, gold, cattle, corn, domestic utensils and friends and the augmenting of what is acquired' (vide H. Dh. Vol. II part I. p. 9 note 22). Therefore when wealth and prosperity of all kinds is the spring and motive of giving a name the science treating of these is called arthaśāstra and when the government of the people and the punishment of offenders are the main ideas the same is called dandanīti. Though works like Kautiliya's Arthaśāstra place a high value on dharma they are principally concerned with the treatment of central and local government, taxation, the employment of *sāma* and other upāyas, with alliances and wars, appointment of officers and punishment. Therefore Arthaśāstra is mainly what is called *dṛṣṭārtha* smṛti, as stated by the *Bhaviṣyapurāṇa* (quoted by Aparārka p. 626, the *Smṛticandrikā* p. 24, *vyavahāra* and *Vīramitrodaya*, *paribhāṣā* p. 19). Medhātithi on *Manu* VII 1 explains that dharma in that verse means

11. अधीन्य तावद्व्यवनीतिम् । इवमिदानीमाचार्यविष्णुमुनेन शौर्यार्थे प्रहसिः श्लोकाः सप्तशतैः संलिप्ताः । येपि मन्त्रकर्तृणाः शास्त्रतन्त्रकाराः श्रुत्याद्विरसविशालाक्षपादुद्गित-
द्वयप्रसारणमुत्तमः &c. । दशकुमारचरिते VIII. pp. 131 and 133 (B.S. Series edition).

12. आनर्थोक्तिर्वा दृष्टनीतिस्तर्कविद्यार्थशास्त्रयोः । अमरकोशे (अभ्याख्येयम्) - धीर-
श्वामि derives 'दृष्टयतेनेन दृष्टमर्थं वा दृष्टः स नीयते दृष्टं यति प्राप्यते यथा सा दृष्ट-
नीतिरर्थशास्त्रम् ।

'duties' (dharmaśabdah kartavyatāvacaṇah), that the duties of the king are either *dr̥stārtha* (i. e. the effects of which are worldly and visible) such as the employment of six *gūṇas* (sandhi, vighraha &c.) or *adr̥stārtha* (that have no visible effect but have a spiritual result) such as Agnihotra; here (in chap. VII-LX of Manu) the remarks relate principally to *dr̥stārtha* matters since it is well-known that the word *rājadharmā* is applicable to such matters (the six *gūṇas* &c.) only.¹³ Medhātithi here declares that the rules of *rājanīti* are not based on the canonical books of dharmaśāstra but principally on the experience of worldly affairs.

Another name for the science of government is *Nītiśāstra* or *Rājanītiśāstra*. Śānti¹⁴ 59.74 says that in the *nītiśāstra* are set forth all those means whereby people are prevented from forsaking the right path. The *Nītiśāra* of Kāmandaka¹⁵ (I. 6) does obeisance to Viṣṇugupta who extracted the nectar of *Nītiśāstra* from the vast ocean of *Arthaśāstra* (works). The *Pañcatantra* p. 2 holds that *Arthaśāstra* and *Nītiśāstra* are synonymous. The *Mitākṣarā* on *Yāj.* II. 21 remarks that the *arthaśāstra* referred to by *Yāj.* is *rājanītiśāstra* that is part and parcel of *dharmaśāstra*. The word '*rājanīti*' occurs in *Raghuvamśa* 17.68. Vide *Bhagavadgītā* X. 38, *Āśramavāsikaparva* 6.5, *Manu* VII. 177, Śānti 111. 73, 138, 39, 43 and 196, 268.9 and *Anuśāsana* 163.7 for *Nītiśāstra* meaning *Arthaśāstra* or *Rājanīti* and *Droṇa* 152.29 and Śānti 37.9 for the word *rājanīti*. Another noteworthy word is '*naya*' which means '*line of policy*' and is employed by the *Arthaśāstra* (I. 2) when it says '*naya* and *anaya* (bad policy) are treated of in *Dandānīti*'. It is also used in several classical works, such as the *Kīrātārjunīya* (II. 3, 12, 54, XIII. 17).

The relation of *arthaśāstra* to *dharmaśāstra* has now to be understood. As stated above *rājadharmā* is a very important subject of *dharmaśāstra*. *Arthaśāstra* which is principally concerned with the rights, privileges and responsibilities of the ruler is therefore properly speaking a part of *dharmaśāstra*. As shown above it is supposed to have

13. धर्मशब्दः कर्तव्यतावचन इत्युक्तम् । ... कर्तव्यं च दृढार्थं बाह्यमुपपादि । अदृष्टार्थं मद्रिहोपादि । तत्रैव प्राधान्येन दृढार्थ उपदिश्यते । तत्रैव च राजधर्ममस्तिद्धिः । मेधा० on मनु VII. 1.

14. वैयर्थ्यवर्णितोक्तस्तु न चलेद्वार्धर्ममेतः । तत्सर्वं राजशास्त्रं नीतिशास्त्रेभिर्बजितम् ॥ शास्त्रि. 59.74.

15. नीतिशास्त्राद्युक्तं भीमानर्थशास्त्रमहोदधेः । समुद्रमेव ममस्तस्मै विष्णुमुत्साप वेधमेव ॥ कामन्दकीयनीतिसार 1. 6.

like dharmaśāstra a divine source. But works on arthaśāstra enter into great details about the government of a country in all its aspects, while dharmaśāstra works generally deal only with a few salient features of rājāśāstra. Just as the Kāmasūtra (I. 2. 14) states that dharma is the highest goal and kāma is the lowest of the three puruṣārthas (vide H. Dh. vol. II part I p. 9), so Arthaśāstra also sets the highest value on dharma. The Kauṭīliya states (III. 1. at end) "In any matter where there is a conflict between dharmaśāstra and practices or between dharmaśāstra and any secular transaction, (the king) should decide that matter by relying on dharma. If śāstra comes in conflict with any rational and equitable rule then the latter shall be the deciding factor and the (strict) letter of the text will be nowhere'. But Kauṭīliya and other writers on arthaśāstra lay the greatest emphasis on artha. In the eager and relentless pursuit of worldly prosperity means may be recommended or followed which may come in conflict with the strictly ethical standpoint of the dictates of dharmaśāstra. In such cases of conflict dharmaśāstra works lay down (e.g. Āp. Dh. I. 9. 24. 23, Yaj. II. 21, Nārada, vyavahāramātrkā chap. I. 39) that dharmaśāstra rules are to be preferred to the dictates of arthaśāstra. Viśvarūpa (on Yaj. II. 21) states that according to some predecessors of his the conflict between the dictates of dharmaśāstra and arthaśāstra is illustrated as follows. Manu VIII. 351 (which is the same as Viṣṇu-dharmasūtra V. 190 and Matsyapurāṇa 227. 116-117) when dealing with vyavahāra (a subject that pre-eminently belongs to arthaśāstra) provides that in killing an ātāyīn, no fault attaches to the killer: while Manu XI. 89 in the chapter on prāyaścittas (which is pre-eminently a topic of dharmaśāstra) states that no penance is prescribed (i.e. there is no prāyaścitta for removing the guilt) when a person of set purpose kills a brāhmaṇa. The result is that the latter rule prevails and sin is incurred by killing a brāhmaṇa even if the latter be an ātāyīn (though there may be no punishment by the king). Viśvarūpa does not accept

16. संस्थाया धर्मशास्त्रेण दातव्यं वा व्यावहारिकम् । परमिष्येति विद्वद्वैत धर्मोपाधि
विनिश्चयेत् ॥ दातव्यं विमतिपद्येत धर्मस्थापनेन केनचित् । स्थापयन्तं यमार्थे स्थापयन् पाठो हि
नश्यति ॥ कौटिलीय III. I. p. 150. Prof. K.V. Rangaswami Aiyangar gives two in-
consistent translations of these verses at pp. 54, 170 of his 'Ancient Indian
Polity' (1935). धर्मसूत्रस्यास्माकमदत्तावधार्यस्य धर्मधिकानामनुवन्धावधार्यस्य सिद्धिः सा
सर्वाधिसिद्धिः । कौटिलीय IX. 7. p. 362.

this illustration. The *Mitākṣarā* also refers to this example, disapproves of it and gives its own example. The *Arthasāstra* declares that a king should endeavour to secure friends, since the acquisition of friends is superior to the acquisition of gold and land (as is laid down in *Yāj. I. 352*). The rule of *dharmaśāstra* is that a king has to dispense justice, being free from anger and avarice and in accordance with *dharmaśāstra*. Therefore when a suit comes before a king he must decide it according to law, even though he may lose the friendship of a person if his decision goes against the latter. The *Vīramitrodaya* follows the *Mitākṣarā*. *Dharmaśāstra* went by the name of *smṛti* (*Manu II. 10*), while *arthasāstra* was treated as an *Upaveda*. The *Viṣṇupurāṇa III. 6. 28*, *Vāyu 61. 79* and *Brahmaṇḍa 35. 88-89* mention the four *Upavedas*¹⁷ viz. *Āyurveda*, *Dhanurveda*, *Gāndhārvaveda* and *Arthasāstra* as affiliated to the four *Vedas* respectively viz. *Rgveda*, *Yajurveda*, *Sāmaveda* and *Atharvaveda*. *Kauṭīlya (I. 5)* states that the king should listen to the recital of *itihāsa* in the latter part of the day and includes both *dharmaśāstra* and *arthasāstra* under *itihāsa*¹⁸ and requires the minister knowing *arthasāstra* to advise the king (with examples and precepts derived) from *itihāsa* and *purāṇa*.

Though *Arthasāstra* is in theory for keeping to the path of *dharma*, one cannot blink one's eyes to the fact that the *Mahābhārata* and the *Kauṭīlya* both support in several places the adoption of means entirely divorced from all rules of fair dealing and morality. In *Ādiparva 140* we have a discourse by *Kaṇṇika* said to have been a *mantrin* of *Dhṛtarāṣṭra* and a profound student of *Rājāsāstra*, which is almost on the same lines as *Sāntiparva chap. 140* where *Bhīṣma* sets out what lines of policy (*nīti*) should be followed by the ruler in adversity and how he should give up all thoughts of kindness in such straits. He is supposed to give the substance of the dialogue between the sage *Bhāradvāja* and *Satrunṭapa*, king of *Sauvira*. The whole chapter is full of *Machiavellian* advice. A few specimens may be set out here. One should be very courteous in speech, but like a razor at heart (verse 13); one desirous of prosperity may fold one's hands, may take an oath, may use

17. आद्युर्वेदो ऋग्वेदो गान्धर्वश्चेति ते चतः । अथशास्त्रं चतुर्थं च विद्या अष्टादशैव
तान् ॥ *विष्णुपुराण III. 6. 28* quoted by *अपराक* p. 6.

18. पश्चिमामितिहासमवने । पुराणमितिहासमारुवायिकोदाहरणे धर्मशास्त्रमर्थशास्त्रं
चेष्टीतिहासः । *कौटिलीय I. 5. p. 10*.

sweet words, place his head on another's feet and even shed tears, one may carry on one's shoulders one's enemy till one accomplishes one's object and when a fit opportunity arises should break him like an earthen pot on a stone (17-18); the king should raise hopes promising their fulfilment at a distant day, but should put obstacles in the fulfilment of the hopes raised in others (32); when one is reduced to a wretched state one may extricate oneself from it by any act whatever whether gentle or horrible and practise dharma after one becomes able to do so (38); one should inspire confidence in one's enemy by some means which appear to be true (to the enemy), but one should strike him down at the right moment when he takes a wrong step (44); whoever causes obstacles to the purpose of the king, whether son or brother or father or friend, should be killed by the king who desires to prosper (47); without cutting the vitals of others, without committing horrible deeds and without killing indiscriminately as the fisherman in the case of fish one does not secure high prosperity (50); when about to strike one should utter sweet words and even after striking one should use honeyed words; even after severing another's head with a sword one should lament and shed tears (54); if some remainder is left in the case of a debt or fire or enemies, there is a tendency to grow and so no remainder should be left of these (58). It is to be noted that this chapter deals specially with what should be done in difficulties and cannot be supposed to be the real teaching of the Mahābhārata which is generally in line with the higher code of dharmaśāstra. It embodied probably the words of earlier arthaśāstra writers like Bhāradvāja. After hearing this discourse on calculated cruelty and deceit Yudhishthira stood aghast and frankly told Bhīṣma that the course of conduct outlined by him did not differ from that of robbers and that he felt bewildered and would not exert himself in the way pointed out. In chap. 142 Bhīṣma replies to this by saying that he did not base his discourse merely on the sacred texts, but also on reason and the essence was distilled by wise men, that the considered rule of conduct for the king is twofold, viz. straightforward and crooked, that one should not ordinarily employ the crooked course of conduct, but should employ it as against an enemy who employs a crooked policy and effectively meet him by such policy. He further says that *rājadharmā* cannot be based on a single source (v. 7) and that policies are to be pursued not merely by reliance on the sacred codes of law but on reason as well

(v. 17) and that Indra himself has declared this rule which he derived from Bṛhaspati. In Śānti-parva a weak king is advised to harass a very powerful ruler's state by sword, fire and poison. In chap. 130 it is stated that the preservation of the state is the paramount consideration and that a king whose treasury is depleted and who is therefore in difficulties may replenish his treasury even by harassing his subjects (except *tāpasas* and learned *brāhmanas*). In chap. 138 it is said that self-interest makes friends or foes and that *anivāsa* (putting trust in no one) is the grand line of policy for kings. So it is clear that the Mahābhārata was prepared to give up in certain circumstances the strict rules of dharmaśāstra for kings and to allow them to pursue devious modes of action that were far from moral i. e. it tries to effect a synthesis of dharmaśāstra and arthaśāstra.

The Kautiliya also discloses how arthaśāstra writers did not shrink from giving advice which, to say the least, was most cruel, selfish and immoral. For example, in the section called 'guarding the prince' (Kaut. I. 17) the views of several teachers are set out. Bhāradvāja says that princes are of the nature of crabs eating up their parent: so it is better to finish them in secret when they have no love for their father. Viślakṣa abhorred this advice as cruel, as unsanctioned murder and as destructive of the seed of kṣatriyas and recommended that it was better to keep them confined in a single spot. Vāṭavyādhi recommended that princes should be made addicted to sensual excesses. Kaut. disapproves of this as living death (for the princes), recommends proper care before conception and after birth and instruction in dharma. In Kaut. V. 6 Bhāradvāja is quoted as saying that when the king is on his death-bed, the minister may set up the kinsmen of the king and the principal princes against one another, that whoever attacks should be killed by inciting the people against him, or having secretly punished the kinsmen and chief princes and brought them under control, the minister should himself take possession of the kingdom. Kautiliya does not approve of this. But even he advises (XIV Aupaniśadika) the employment of poison, herbs and incantations against those who are irreligious or wicked. In I. 18 even Kaut. does not shrink from advising that secret emissaries (of the reigning king) may kill an abandoned prince with weapons and poison and in V. 1 Kaut. remarks that, when a king cannot openly put down the principal courtiers or chiefs

who are dangerous to the kingdom, he may inflict punishment on them in secret or may induce the brother of the officer to be punished to attack the latter by promising to give him the position and wealth of the officer and then destroy that attacker with weapons or poison saying that he was guilty of fratricide. In V. 2 for replenishing a depleted treasury Kauṭilya coolly asks the king to deprive the temples in the kingdom of their wealth through the superintendent of religious endowments.

Sanskrit literature on rājadharmā is very extensive. Apart from the meagre materials contained in such ancient dharma-sūtras as that of Āpastamba, the following works deserve close study and have been utilized in this section; the Mahābhārata (Vanaparva 150, Sabhā 5, Udyoga 33-34, Śānti 1-130, Āśramavāsika 5-7), the Rāmāyana (Ayodhyā, chap. 15, 67, 100; Yuddha 17-18, 63), Manusmṛti VII-IX, Arthashastra of Kauṭilya (which is the leading work on rājadharmā), Yāj. I. 304-367, Vṛddha-Hārta-smṛti chap. VII verses 188-271, Bṛhat-Parāśara chap. X, pp. 277-285, Viṣṇudharmasūtra III, the Nītisāra of Kāmandaka, Agnipurāṇa chap. 218-242, Garuḍapurāṇa 108-115, Matsya 215-243, Viṣṇudharmottara II, Mārkaṇḍeya 24, Kālikā 87, the Nītiprakāśika attributed to Vaiṣampāyana (ed. by Oppert), Śukranītisāra (ed. by Jivānanda, 1890), the Abhilāṣitārthacintāmaṇi or Mānasollāsa (first four vimśatis) of Someśvara, Yukti-kalpataru of Bhoja, Nītivākyaṃṛta of Somadeva (959 A. D.), Bārhaspatyasūtra (ed. by Dr. F.W. Thomas), the Rājanītikāṇḍa of the Kṛtyakalpataru of Lakṣmidhara (edited from a single ms. by Jagadish Lal Shastri at Lahore, 1942), Rājanīti-ratnākara of Candēśvara, Rājanīti-prakāśa of Mitrāmīśra, Nītimayūkha of Nilakanṭha, Rājadharmakaustubha of Anantadeva, Budhabhūṣaṇa of Prince Sambhāji (between A. D. 1675-1680, ed. by Prof. H.D. Velankar), Dandanīti of Keśavapandita (edited by V. S. Bendrey, Poona, 1943). In recent times there is a deluge of works mostly inspired by the publication of the Kauṭilya dealing with ancient and medieval Indian polity in its various branches. The most important of these and a few other works independent of Kauṭilya are mentioned in the note below.¹⁹

19. Some parts of the Śāntiparva may be later than Kāmandaka's work, since Śānti (123. 11-12) refers to the dialogue of Kāmandaka and Āṅgariṣṭha king of Ahga. But it need hardly be said that it is not absolutely necessary to hold that the extant Nītisāra of Kāmandaka is referred to by Śāntiparva.

It would be impossible to go into all details about Government and Politics within the space at my disposal. What is

(Continued from last page)

The reference may be only to a legend. The modern works referred to above are:—'Some Aspects of Ancient Indian Polity' (1935) and 'Rājadharmā' (1941) by Rao Bahadur K. V. Rangaswami Aiyangar; 'The Nature and grounds of political obligation in the Hindu state' by J. J. Anjūria (1935); 'Development of Hindu polity and Political Theories' (Calcutta, 1929) by N. C. Bandopadhyaya; 'Public Administration in Ancient India' (1916) by Dr. P. N. Bannerjee; 'Some Aspects of ancient Hindu Polity' (1921) by Prof. D. R. Bhandarkar; 'The theory of Government in Ancient India' (1927) and 'The State in Ancient India' (1928) by Dr. Beni Prasad; 'Buddhist India' (1903) by Rhys Davids; 'Hindu Administrative Institutions' (Madras, 1929) and 'Mauryan Polity' (Madras, 1932) by Prof. V. R. Ramchandra Dikshitar; 'History of Hindu Political Theories' (2nd ed. Calcutta, 1927) by U. Ghoshal; Prof. E. W. Hopkins' 'Position of the Ruling Caste in Ancient India' in Journal of the American Oriental Society, vol. XIII. pp. 57-372; 'Hindu Polity' (1924) by K. P. Jayaswal; 'Administration and Social Life under the Pallavas' (1938) by Dr. C. Minakshi; 'Studies in Ancient Hindu Polity' (vol. I, 1914), 'Inter-state Relations in Ancient India' (London, 1920), 'Aspects of Ancient Indian Polity' (Oxford, 1921), 'Studies in Indian History and Culture' (1925) by Dr. Narendranath Law; 'Corporate Life in Ancient India' (Calcutta, 1919) by Dr. R. C. Majumdar; 'Local Government in Ancient India' (1919) by Dr. Radhakumud Mukerjee; 'Study in the Economic condition of Ancient India' by Dr. Pran Nath; 'Positive Background of Hindu Sociology' (Allahabad, 1914) and 'The Political Institutions and Theories of the Hindus' (1922) by Prof. Benoy Kumar Sarkar; 'Sovereignty in Ancient Hindu Polity' by Dr. H. N. Sinha (London, 1938); 'International Law in Ancient India' by Prof. S. V. Visvanathan. I have to make general acknowledgments to these works for much useful information, particularly to those of K. P. Jayaswal and N. N. Law. For a list of Mss. on Polity or its sub-topics, vide N. N. Law's articles in Modern Review for October 1917 to January 1918 and March and June 1918 and for a list of available Mss. and printed works on 'Vārā' (economics) vide the same writer's 'Studies in Indian History and Culture' pp. 384 ff. In my treatment of *rājadharmā* I have generally restricted myself to data derived from Sanskrit works on dharmaśāstra and arthaśāstra and have rarely ventured into works in Pāli. Similarly it has to be borne in mind that the works referred to cover a period of several centuries and further that India is not one country but a continent of which northern India formed one more or less homogeneous unit, while the Deccan formed another and South India formed a third unit. The institutions of these, particularly of the last of the three, differ in many particulars from those of the other two. But the authentic data furnished by South India are later by centuries than those supplied by the north and besides are comparatively meagre. Therefore in this work one has to confine oneself principally to Sanskrit works composed in North India or the Deccan.

proposed is to indicate and dilate upon only the fundamental ideas and principles of the several matters falling under rājadharmā. Nor is it possible to enter here into formal and lengthy refutations of the several views propounded by Western and Indian writers about the forms and functions of Government and the state of society in ancient India. Most of the modern works referred to in note 19 above are more or less based on the same material in Sanskrit and Pāli, but the emotional or subjective element is different in each case. Some western writers have without very solid foundations indulged in a facile and sweeping generalization that the great Empires of antiquity such as those of the Assyrians, the Babylonians, the Medians and Persians and the Indians were mainly tax-gathering institutions (vide Sir Henry Maine's 'Early History of Institutions' 1875, pp. 384 and 390; and Prof. Rangaswami Aiyangar's 'Ancient Indian Polity' 1935, pp. 5—6 and pp. 66—69 (where passages from T. H. Green and others are cited); while some Indian writers vehemently assert that the Government in Ancient India was always some form of limited monarchy. Both characterisations are in my opinion misleading. An endeavour will be made to present from the original texts as true a picture of the polity of ancient and medieval India as it is possible for me to do. It will do no good to label the ancient institutions of India with concepts and terms current in the West during the last one hundred and fifty years or so. Even in the West true democracies or real democratic governments did not exist and the masses in no country had elective popular assemblies or councils before the last quarter of the 18th century. Such assemblies do not exist even now in several countries of Europe. Even in the ancient Greek city states the number of slaves who had no voice in the government was several times as large as the free citizens and those states were no democracies at all in the strict sense.^{19a} Indian polity has a recorded history of over two thousand years from at least the 4th century B. C. Its growth was gradual but its aims and ideals and its main elements have been the same throughout the centuries. India need not feel ashamed or fear

19a. Berolzheimer in 'the World's Legal Philosophies' (tr. by Jastrow, New York, 1929) p. 62 remarks 'Plato approved of slavery unreservedly, finding it a necessary condition for the maintenance of the proper status of the citizen; ... Thus in the maritime and industrial states there was a large slave class; in Corinth, 460000; Aegina, 470000; in Attica (according to the census of 309 B. C.) 400000'.

a comparison of its ideals and theories of State with the ideals and theories of western countries in ancient and medieval times. If western countries could boast of so-called republics and city states in ancient Greece and Rome, India also had several republics in ancient times. The ancient Hindus made their own contributions to political thought, though unfortunately Western scholars of the 19th century like Max Müller, Weber and Roth were concerned most with the Vedic and allied literature and either did not know or ignored the vast literature on politics contained in Sanskrit and Pāli works. Vide 'Some Aspects of ancient Hindu Polity' by Prof. D. R. Bhandarkar (1929) pp. 2-3 for views of Max Müller and others and criticism thereof, also Dr. Beni Prasad's 'Theory of Government &c.' p. 1, U. Ghoshal 'History of Hindu Political Theories' pp. 3-4.

CHAPTER II.

SEVEN ĀNGAS OF RĀJYA

According to almost all of our authorities a state (*rājya*) is constituted by seven elements²⁰ viz. *swāmin* (ruler or sovereign), *amātya* (minister), *janapada* or *rāṣṭra* (the territory of the State and its people), *durga* (fortified city or capital), *kośa* (accumulated wealth in the ruler's treasury), *danda* (army), *mitra* (friends or allies). These seven are called *āṅgas* or *prakṛtis*. The word *prakṛti* in works on politics is also used for the constituents of a circle of states (of a *maṇḍala*). Vide Manu VII 156 and Kauṭilya (VI 2). The word also means ministers as in Śukranitisāra II. 70-73 and 'subjects' in Khāravēla's Inscription (E. I. vol. 20 p. 79 l. 4), Nārada (*prakṛpaka* 5), Raghuvamśa VIII. 18. The order in which these are arranged and their names vary a good deal. The quotations given below will indicate how the order differs. The sequence is important for the reason that some of our authorities expressly state that when calamities befall or deterioration sets in each of the seven elements, those that befall each preceding one are more serious for the State than those of each succeeding one (Kauṭilya VIII. 1, Manu IX. 295). For *janapada* sometimes the word *jana* or *rāṣṭra* is used, for 'danda' the word 'bala' and the word 'pura' for 'durga'. The Āśramavāsiparva (5.8) speaks of eight *āṅgas* of *rājya*. According to Sumantu quoted by the Sarasvativilāsa (p. 46) *danda* means "punishment bodily or monetary" and 'army' is included under 'kośa'. Sumantu says that the *swāmin* has to be preserved by himself, the ministers by showing them proper respect, the people by keeping them contented, the fortified capital by abundance of wealth and grain, the *kośa* by proper expenditure, *danda*

20. स्वाम्यमायजनपददुर्गकोशदण्डमित्राणि षडङ्गानि । कौ. VI. 1, p. 357; स्वाम्यमायजनपदो दुर्गकोशो दण्डस्तथैव च । मित्राण्येताः षडङ्गानि राज्यं सहायकमुच्यते ॥ पाञ्च. I. 353; स्वाम्यमाययो दुर्ग राशौ कोशदण्डौ सहायकाः । सप्त प्रकृतयो ज्ञेयाः समाङ्गं राज्यमुच्यते ॥ मनु IX. 294; स्वाम्यमायवदुर्गकोशदण्डराष्ट्रमित्राणि षडङ्गानि । विष्णुधर्मसूत्र III. 33; स्वाम्यमायवदुर्गकोशदण्डजनाः । नोतमस्य quoted in सरस्वतीविज्ञान p. 45. Vide also शान्ति 69, 64-65, मत्स्य 225, 11 and 239, अग्निपुराण 233. 12, कामन्दक I. 16 and IV. 1-2. The application of the word षडङ्गानि to these is lucidly explained by Aparārka (p. 588) एतः कार्यसुखद्योतयतिष्ठते नियमेन भवति सा षडङ्गिः । यथा विरूपं कुण्डलरूपं । राज्यं च विना स्वाम्यादिभिर्मन्यते, उत्पन्नमपि न तैर्विना विरहात्मन्यवति । ततो भवति स्वाम्यादयो राज्याङ्गानि ।

by following one's dharma, friends by truthfulness. The authorities are agreed that the ruler is the most important or the first of the seven. Kautilya puts the matter very forcibly and realistically when he states that the briefest exposition of the elements of *rājya* is to say that the king is the State²¹. This is really not the same doctrine as that emphasized by Louis XIV of France when he said '*L'Etat c'est moi*'. Kautilya makes his position clear (in VIII 1) by saying that it is the king who appoints ministers and servants and superintendents, who takes measures of relief against calamities befalling the other prakṛtis and measures of prosperity, that it is he who appoints other ministers when those already appointed are under calamities, that if the ruler is prosperous he transmits prosperity to his prakṛtis, that the prakṛtis bear that character which the king has and that hence the ruler occupies the position of a permanent, never-exhausted centre of power. The Sukranitisāra II.4 remarks that if the king begins to act at his sweet will, it leads to calamities, to loss of ministers and of the kingdom. The Sukranitisāra (I 61-62) compares the seven aṅgās of *rājya* to the organs of the body viz., the king is the head, the ministers are the eyes, ally the ear, treasury the mouth, the army the mind, capital and *rāstra* are hands and feet. It is emphasized by Kām. (IV.1-2) that each of the seven elements is complementary to the others, that if the state is defective even in one out of the seven elements it does not pull well. the Śāntiparva it is stated that it is not possible to say categorically that any one of the seven excels the others in merit, but that at different times a different element assumes importance over others, since that particular element is in the particular circumstances capable of accomplishing the purpose in hand. This shows that Manu and the Mahābhārata held that there was an organic unity in the several elements of *rājya*. All must work harmoniously towards one ideal or end. Manu (IX. 296-297) says this by means of a simile 'Just as among the three staves tied together (by a rope of cow's hair) used by a *sannyāsin* no particular staff is superior (to the others), so among

21. राजा राज्यमिति बहुवचनेनैव । कौटिल्य VIII. 2: तत्पुत्रस्थानीयो हि स्वामीति । को. VIII. 1: सत्ताङ्गमुच्यते राज्यं तत्र सूर्यो ह्यस्य स्वतः । इत्युक्तम्: सुहृद्भिर्युक्तं ह्यस्य कोशो बलं मनः । इत्थो पादो दुर्गराजो (?)—शुक्रनीति I. 61-62: सत्ताङ्गस्यापि राज्यस्य मूलं स्वामी यकीर्तिः । राजनीतिम्. p. 123: सत्ताङ्गस्यास्य राज्यस्य विदुषस्तस्य विदुतः । अन्वयव्युत्पत्त्यर्थं कः केन गुणतोऽधिकः " तेषु तेषु हि कालेषु तत्सङ्घं विविच्यते । येन बहु सिध्यते कावे तत्पञ्चाङ्गस्य बलवते " आन्तिपर्व: मनु IX. 296-297 contain almost these very words and ideas. मन्स्य 239. I has परस्परोपकारीदं सत्ताङ्गं राज्यमुच्यते ।

the seven elements of the state no particular one can be said to excel the others, since each of them has a particular excellence of its own: a particular element is pre-eminent in some particular matter and therefore the superiority of one to the others when expressed (as e. g. in Manu IX. 295) is to be confined to that matter alone. Manu here emphasizes the harmonious working or unity of the seven elements though they are diverse in their individual characters. The analysis of the elements and nature of the State led ancient Indian writers to hold that a mere conglomeration of people did not by itself constitute a State, but that for a State there must be people who live within certain definite geographical limits (*rāstra*), they must be bound by the bond to render allegiance to a ruler (*svāmī*), have a certain system of government (*amātya*), must have a regulated economic system, a force for defence and international relationships. That is, the most essential elements of a state are (1) a sovereign, (2) a system of government, (3) a definite territory and (4) a population of some size. These four were known even to the most ancient *sūtras*. Vide Gaut. XI 1 (*rājā*), Āp. II 6. 25. 10 (*amātya*), Āp. II 10. 25. 11, II 10. 26. 4 (*visaya, nagara, grāma*), Gaut XI 5-8 (*prajā*).

These seven elements will now be dealt with one after another.

It should be noted that neither Kautīlya nor Kāmandaka defines *rājya*. Etymologically it means the 'karma' or 'bhāva' (activity or state of a king), being derived from 'rājan' with the affix 'ya' (*śyañ* or 'yak', acc. to Pāṇini V. 1. 124 and 128). This is the etymological meaning. But 'rājya' is employed in the sense of 'kingdom' in popular parlance and also in the *śūrtis* and works on polity as in Manu VII. 111, Kām. XIII. 81-82. But when it is said that 'rājya' has seven elements then 'rājya' has a very wide meaning and stands for the king, the ministers, the country and its people and the economic and military resources and in such a case it is proper to translate the word as 'the State' (as including both the Government and the governed). In some cases 'rājya' should be rendered as 'government' which includes only the king and his ministers and conveys also in modern times the agency or machinery through which the will of the State is formulated, realized or carried out; vide *Mānasollāsa* II 8, verses 688, 689, 691. The *Nītivākyaṃrta* (p. 43) says "rājya means the activity of the ruler that would be appropriate to protecting the earth".

Medhātithi on Manu VIII. 1 remarks that *rājya* means 'a prosperous people'. In XIII. 4 Kautilya states (*na hyajano janapado rājyam janapadam vā bhavatīti Kautilyah*) it as his opinion that a territory without any inhabitants cannot become a *rājya* (a kingdom) or a janapada (as one of the seven elements). Śābara on Jai. II. 3. 3 has a discourse on the derivation of *rājya*.

Prof. Bhandarkar in 'Some Aspects of Ancient Indian Polity' (pp. 66-89), Jaysawal in 'Hindu Polity' part II p. 9, Prof. B. K. Sarkar in 'Positive Background of Hindu Sociology' Book II pp. 34-39 and others maintain that this ancient analysis of *rājya* into seven elements shows that the idea of the State as an organism, that is, the organic theory of the State was known to Hindu thinkers and that this doctrine of *saptāṅga rājya*^{21a} satisfies the definition of the State given by Bluntschli and others. On the other hand Mr. Anjaria in chapter IV of his 'Nature and grounds of political obligation in the Hindu state' after pointing out how there are different versions of the organic theory of the state denies vehemently that the Hindu theory can be called a proper organic theory of the State, particularly because the Hindu thinkers did not regard the State as a moral organism, because they attached a permanent stigma of inferiority to large sections of the community on the bare ground of birth and that the Hindu conceptions did not harmonize the authority of the State and the liberty of the individual. It would be far beyond the scope of the present work to enter into any discussion of this problem. All that may be said is that Mr. Anjaria tilts the balance to the other side too much. The faults he points out in the Hindu theory and practice beset almost all theories of the State almost in all countries. Even in the times of Plato and Aristotle huge populations of slaves had no voice in the affairs of the state. Up to the 19th century true democracies never existed even in Europe.

The Ruler—The necessity of a ruler is forcibly emphasized in several works. The Ait. Br. I. 14 says that the gods thought they were worsted because they had no king, that therefore they elected one by consent. This shows that military necessities

21a. Korkuncov in 'General Theory of Law' (tr. by W. G. Hastings, New York, 1922) says 'Bluntschli assimilates government to the head, as it is the head of the State, the ministry of the interior to the ears, and that of foreign affairs to the nose' (p. 274).

led to kingship. Manu VII 3 (= Sukranitisāra I 71) says 'the Creator created the king for the protection of all this world when everything ran through fear hither and thither, as there was then no ruler in the world'. It goes on to say that the Creator proceeded to create Danda (the power of punishment) for the sake of the king and that if the king does not sedulously employ danda for punishing those that deserve it, the strong would torment the weak as fish are fried on a pike or as in water fish devour each other (Manu VII 14 and 20, the last also showing a variant 'jale' for 'sūle'). This idea of *mātsyanyāya* (the maxim of the larger fish devouring the smaller ones or the strong despoiling the weak) is frequently dwelt upon by Kautilya, the Mahābhārata and other works. It can be traced back to the Śatapatha-brāhmaṇa XI 1. 6. 24 'whenever there is drought, then the stronger seizes upon the weaker, for the waters are the law', which appears to mean that when there is no rain, the reign of law comes to an end and *mātsyanyāya* begins to operate. Kautilya says 'if danda be not employed, it gives rise to the condition of *mātsyanyāya*, since in the absence of a chastiser the strong devour the weak' and 'the people overwhelmed by the operation of *mātsyanyāya* made Manu Vaivasvata their king.'²² That in the absence of a king (*arājaka*) or when there is no fear of punishment, the condition of *mātsyanyāya* follows is declared by several works such as the Rāmāyana II chap. 67, Śāntiparva 15. 30 and 67. 16, Kāmandaka II 40, Matsyapurāṇa 225. 9, Mānasollāsa II 20 verse 1295. Numerous works contain eulogies of danda. The king is called dandadhara in many works e.g. in Śāntiparva 67. 16 and Kām. I 1. Gautama XI 28 says that the word danda is derived by the wise from the root 'dam' (to control), that he (the king) should control by means of danda those who observe no restraint and (XI 31) that the instructions of the teacher and the power of punishment (wielded by the king) guard those who violate the rules of varṇas and āśramas. The Matsyapurāṇa²³

22. (दण्डः) अयणीतो हि मात्स्यन्यायसूत्रावपि । बलीयानवर्तं हि दमते दण्डधराभावे । कौटिल्य I. 4; मात्स्यन्यायमिश्रताः यज्ञा मर्त्यैर्वैरस्ये राजाने चक्रे । की. I. 13; मत्स्या इव जना मित्वं मङ्गपन्नि परस्परम् । अयोध्या 67. 31; दण्डश्चैव भवेत्तुल्यं विनश्येदुरिमाः यज्ञाः । जले मात्स्यनिधामहवन्दुर्बलं बलधराः ॥ शांति 15. 30; राजा येष भवेत्तुल्यं दुष्टिभ्यो दण्डधारकः । जले ... बलधराः ॥ शांति 67. 16; दण्डाभावे पारिवर्त्ती मात्स्यो न्यायः प्रवर्तते । कामन्दक II, 40.

23. यस्माद्दुष्टान्ताद्दुमपत्यमिष्टान्दण्डपरवपि । दुमनादुष्टनाञ्चैव तस्मादुष्टं विदुः । शांति 15. 8, अष्टि. 225. 16 (reads >दुमपत्यदुष्टान्दण्डपरवपि), मत्स्य 225. 17 (reads दुर्मदाम् दण्डपरवपि).

225, 17, Agnipurāṇa 226, 16 and Śāntiparva 15, 8 state that danda is so called because it suppresses those that are not restrained (from the root 'dam') and punishes those that are imprudent or ungentlemanlike (from the root 'dand'). Danda is raised to the position of a divinity by Manu ²⁴ VII, 25 (= Viṣṇudharma-sūtra III, 95 = Matsya 225, 8), Yāj. I, 354, Śānti 121, 15. Danda rules over all people, it protects all of them, danda is awake even when (the guardians of law) have gone to sleep, the wise regard danda as dharma (Manu VII, 18 = Śānti 15, 2 = Matsya 225, 14-15). The whole world is under the heel of danda, for it is difficult to find a man who is pure by nature (Manu VII, 22 = Śānti 15, 34). The conception of danda is therefore this that the State's will and coercive power keep the individual and nation within the bounds of dharma, punish for breaches and effect the good of the whole. The gods, *dānavas*, *gandharvas*, the *raksasas* and reptiles—these also tend to bring about enjoyment for men because they are pressed down by danda (Manu VII, 23). ²⁵ The Bhagavadgītā (X, 38) identifies danda with the divine Kṛṣṇa 'I am danda in the hands of those who control others, I am *nīti* (i.e. *rājaniṭi*) for the conquerors'. For the detailed effects and long eulogies of danda, vide Manu VII, 14-31, Matsya 225, 4-17, Kāmandaka II, 38-44. These eulogies of danda presuppose the theory that people obey law and the dictates of the śāstra through the fear of force or punishment. Danda should be neither too severe nor too mild, but should be appropriate to the fault committed (Kaut. I, 4, Kāmandaka II, 37, Manu VII, 16, Śānti 15, 1ff, Śānti 56, 21, 103, 34). Śānti 57, 41 advises that one should first secure a king, then wife and then wealth, for in the absence of the ruler there would be no wife nor private property. ²⁶ This shows that the institutions of family and private property and the protection of the weak are bound up with the existence of a ruler. Kātyāyana (in Rāja N. P. p. 30) says the king is the

24. यत्र इषामो लोहितालो वृषध्वरति पापहरः । यज्ञास्तत्र न दुःखन्ति नेता चेसाधु पश्यति ॥ मनु VII, 25 = मत्स्य 225, 8 = विश्वधर्मसूत्रः 96¹ III सान्ति (121, 15-16) has नीलोत्पलवृक्षश्यामश्चतुर्विधश्चतुर्भुजः । ... एतद्वृषं विभरवृषं वृषो नित्यं दुरासदुः ॥

25. This appears to be suggested by the words of the Tai. Up. II, 8 'भीमास्माद्व्रातः पश्ये भीषोदेति सूर्यः । भीमास्माद्विभ्रेन्द्वयं सूर्युर्धोपति यज्ञमः ।'

26. राजानं प्रथमं विन्देन्नतो भार्यं ततो धनम् । राज्यमसति लोकस्य कुतो भार्या कुतो धनम् ॥ शांति 57, 41. The first half is आदिपर्व 160, 12 (Cr. ed. 148, 12). This verse is said to have been uttered by Bhārgava.

protector of the helpless, the home of the homeless, the son of the sonless and the father of the fatherless.)

In order to magnify the importance of the kingly office, certain works state that the king has in him parts of the gods. For example, Manu says "the Creator created the king with the essential parts taken from Indra, the Wind god, Yama, the Sun, Agni, Varuna, the Moon and Kubera the lord of wealth and therefore he surpasses all beings by his majesty (VII. 4-5 and compare Manu V. 96); one should not disrespect a boy-king with the thought 'he is a human being (like others)' for it is a great deity that stands (before people) in human form as a king" (Manu VII. 8 = Śānti 68. 40). This conception goes back to Gautama XI. 32 ('Therefore a king and a spiritual teacher must not be reviled') and Āp. Dh. S. I. II. 31. 5 ('he shall not speak harsh or abusive words of the gods or of the king'). Manu VII. 3-4 are the same as Sukranitisāra I. 71-72. The Matsyapurāṇa 226. 1 states that the king was created by Brahmā by taking portions of gods for wielding the power of punishment for the protection of all beings. Manu (IX. 303-311) puts forward a slightly diluted theory, viz. the king should possess the majesty of and imitate in his actions the first seven deities enumerated above with the Earth as the 8th and Manu sets out what the eight characteristic actions are. Matsya 226. 9-12 are the same as Manu IX. 303-306. The Agnīpurāṇa (226. 17-20) states that as the king exercises the functions of nine deities viz. the Sun, the Moon, Vāyu, Yama, Varuṇa, Fire, Kubera, the Earth and Viṣṇu he has the form of these. Vide Sukranitisāra I. 73-79 for similar ideas. These verses do not amount to the express theory of divine origin, but assimilate by analogy the king's functions to those of certain deities. The Nārada-smṛiti (prakṛṣṭaka section, verses 20-31) contains²⁷ several interesting dicta. It says that in the form of the king it is really Indra himself who moves about on the earth (v. 20), that a king even when devoid of qualities deserves honour from the people, that kings exercise the functions of five deities viz. of Agni, Indra, Soma, Yama

27. राजेति सञ्चरत्येव भूमौ साक्षात्सहस्रदक् । पञ्चानां विष्णोर्लोपेवं दुग्धं तु यजमापति ॥
पञ्च रूपानि राजानो धारयन्पमितौजसाः । अहोरेन्द्रस्य सोमस्य यमस्य पनदस्य च ॥
अशुचिर्वचनास्यस्य शुचिर्वचति मानवः । शुचिर्भैषाशुचिः सम्पदः कथं राजा न दैवतम् ॥
वारदस्तुतिः पक्षीर्नक 20, 22, 26, 52: इन्द्रमेव यदुच्यते यद्विज्ञानमिति श्रुतिः । यथैवेन्द्रतथा
राजा संपुण्यो भूतिमिच्छता ॥ शास्त्रि. 67. 4: कात्यायन says 'सुराध्यक्षः पुरुषः स्वर्गाध्यक्ष-
त्वेन तिष्ठति । कर्तव्यं तेन तज्ज्ञायं येन तत्त्वं समाप्नुवात्' (quoted by राजधर्मशास्त्र
III p. 16. तत्त्वं means सुरेश्वरत्वम्).

and Kubera (vv. 26-31). The Markandeyapurāṇa (27. 21-26) mentions the same five deities. 'The Veda says that when a king is chosen it is Indra himself that is chosen; one desirous of prosperity should honour the king just as one worships Indra'—says Śānti 67. 4. Śānti 69 states that all the gods are invisible, but the king is a deity that can be seen. The Vāyupurāṇa (57. 72) remarks ²² that in all past and future *manvantaras* universal emperors (*cakravartin*) are born on the earth with parts of Viṣṇu. The Matsyapurāṇa (226. 1-12) mixes up the theory of the creation of the king from parts of the gods with the lesser idea of his functions being similar to those of certain deities. The Bhāgavata-purāṇa (IV. 14. 26-27) states that Viṣṇu, Brahmā, Śiva, Indra, Vāyu, Varuṇa—these and other gods—exist in the body of the king and that the king is full of (the parts of) all gods. It is to strengthen this conception that ancient kṣatriya dynasties and their panegyrists tried to trace for those dynasties descent from the Sun or the Moon and in later times from Fire. The practice of addressing the king as 'deva' in Sanskrit dramas is due to the same tendency of the glorification of the royal office. Aśoka was styled 'devānām priya' (beloved of the gods) and Kushana emperors like Kaniṣka and Huviṣka styled themselves Devaputra (E. I. vol. I pp. 371 at pp. 381 and 386). This phenomenon is not confined to India. Alexander the Great and Julius Caesar had their descent traced to gods and goddesses. Alexander was deified during his life-time in 324 B. C. by the Greek world (vide Cambridge Ancient History, vol. VI p. 433) and Caesar's image was carried among those of the immortal gods. Kautīlya (I. 13) makes a spy say among pauras and jānapadas 'kings are (in) the place of (perform the functions of) Indra and Yama, since they visibly inflict punishment and bestow favours. Even divine punishment affects those who despise them (kings). Therefore kings should not be despised'. Hence it must be said that the conception of the divine nature of the kingly office was well-known in Kautīlya's days and he was not above recommending the employment of this conception for safeguarding the king's position. Vide Rāmāyaṇa, III. 1. 18-19 and VII. 76. 37-45 and Markandeyapurāṇa 24. 23-28, Viṣṇudharmotara II. 2. 9 for similar ideas. The phrase 'nā viṣṇuḥ prthivīpatiḥ'

22. विष्णोरङ्गेन जायन्ते दुधित्या चक्रवर्तिनः । मन्वन्तरेषु सर्वेषु भवति राजतेषु मे ॥
वायु 57. 72; compare काण्वर्षी para 80 about prince Candrāpiḍa 'सर्वथा मनोस्ते
क्षयान्तरधारिणे भवन्ते चन्द्रपीडच्छत्रमे दुन्दुभीक्षेत्रजाय ॥

is well-known and may be interpreted in two ways viz. the ruler of the earth is Viṣṇu incarnated as man or no king is not Viṣṇu i. e. every king is Viṣṇu. The Pañcatantra²⁹ (I 120 p. 19) states 'Manu has declared that the king is made up (of parts) of all gods'. The Rājanītiprakāśa is careful to point out that the idea of the king having in him parts of the deities applied only to the mahārāja (the sovereign ruler), while the idea of a ruler doing the functions of five deities applies to vassal kings.³⁰ For eulogy of the kingly office, vide Manu VII 6-17, Śānti 63, 24-30, Śānti 68, Kām. I 9-11, Rājanītiprakāśa pp. 17-31.

But it should not be supposed that this glorification of the king resulted in the full-fledged theory of the divine right of kings or that every king, however bad, was looked upon as a divinity or could do what he liked. In the first place, the Rājanītiratnākara³¹ (p. 83) when speaking of the coronation of a prince by his abdicating royal father quotes a verse where the people (*prajā*) themselves are called Viṣṇu. In the second place the king's authority over brāhmanas was limited (vide H. Dh. vol. II part I pp. 139-140). The Gautama-dharmasūtra (XI 1, 7 and 8) says³² 'the king rules over all, except over brāhmanas; all, except brāhmanas, should while sitting low on the ground wait upon (worship) him (the king) who occupies a high seat; they (the brāhmanas) too should honour him'. From the time of the Ait. Br. (37. 5) the harmony between the king and the brāhmanas and the king's following the advice of brāhmanas had been insisted upon. Vide Ait. Br. 40. 1, Gaut. VIII 1, XI 27. Further the Sukranītisāra (I 70) states that a king who oppresses the subjects and causes loss of dharma is made up of the parts of *rākṣasas*.³³ Manu (VII 111-112) states that

29. सर्वदेवमयी राजा मनुना संपर्कीर्तितः । तस्मात्तमेव सेवेत न ऽप्यलंकेन कर्हिचित् ॥ पञ्चतन्त्र I. Some editions read तस्मात्तं देववत्पदेव ।

30. इयं च पूर्वोक्तदेवांशरूपता महाराजस्यैव । पञ्च रूपानि... धर्मद्वयं च-द्वयोर्धर्मयोः रूपरूपता तु विषयान्वाहिकरूप भूयस्य । राजनीतिय. p. 20. Vide Śānti 68, 41-47 for the five.

31. इति सर्वान् (सर्वे ?) यज्ञाविष्णुं साक्षिणं आश्रयेन्मनुः । राजनीतिर. p. 83.

32. राजा सर्वस्येष्टे ब्राह्मणवर्ज्यः । तन्मूर्धन्योऽसीनमपस्तादुपासीरिषम्ये ब्राह्मण्यम् । तत्पदेन सम्परेत् । गो. XI. 1. 7-8. गो. XI. 7 is quoted by मेघ, on मनु VII 6 and by राजनीतियकाश p. 17.

33. यो हि धर्मवरो राजा देवांशोऽप्यथ रक्षसात् । भक्ष्यतो धर्मलोपी यज्ञवीहाकरो भवेत् ॥ शुक्रनीति I. 70 ; नीचहीनो दीपवर्ती इन्द्रसेवी सुनीतिपुङ्गवः । समिजुलस्तु यो राजा स ज्ञेयो देवतांशकः । विपरीतस्तु रक्षोऽंशः स वै नरकभाजिनः । शुचीशमदृशा मित्रं तत्सहायकताः किल ॥ शुक्रनीति. I. 86-87.

the king who harasses his subjects loses his life, family and kingdom. Moreover stories of kings killed for their tyranny are found in the ancient Literature. For example, Vena, who was jealous of the gods, wanted sacrificial offerings to be made to himself (and not to the gods) and violated dharma, was killed by the brāhmanas (Śāntiparva 59. 93-95, Bhāgavata-purāṇa IV. 14). The Amsāsanaparva³⁴ (61. 32-33) solemnly sanctions the killing of a king in certain circumstances "The people should gird themselves up and kill a cruel king who does not protect his subjects, who extracts taxes and simply robs them of their wealth, who gives no lead. Such a king is *Kaṭi* (evil and strife) incarnate. That king who after declaring 'I shall protect you' does not protect his subjects should be killed (by the people) after forming a confederacy, like a dog that is afflicted with madness". Manu (VII 27-28) states that the great principle of *danda* if properly wielded conduces to the advancement of the three *puruṣārthas*, but if a voluptuous, mean and unjust king wields it, it recoils on his head and destroys the king together with his relations. Kām. 2. 38 makes it clear that *danda* foolishly wielded might exasperate even hermits. The Śāntiparva 92. 19 recommends that a king who has false and very wicked ministers and who puts down dharma should be killed by the people. Even as early as the Tai. S. II 3. 1 it appears that kings were driven away, while the Śatapatha Brāhmaṇa (XII 9. 3. 1 and 3) mentions a king Duṣtaritu Paumsāyana who had been expelled from the kingdom which had descended to him through ten ancestors. The Sautrāmaṇi *īṣṭi* is prescribed as a rite for a king to regain a kingdom from which he had been driven away (vide H. Dh. vol. II. p. 1227). Śānti 92. 6 and 9, Manu VII 27 and 34, Yaj. I 356 appear to justify at least deposing a king, if not tyrannicide. Similarly, the Sukranitiśāstra (II 274-275) states³⁵ that a king, though of a noble pedigree, should be abandoned, if he violates dharma, if he hates good qualities (in others), lines of policy and the army and if his conduct would lead to the destruction of the kingdom and that the family priest with the consent of the principal

34. अरविष्ठारं हतारं विलोत्तरमनायकम् । तं वै राजकलिं हन्तुः प्रजाः सफलं निर्युजम् ॥
अहं चो रक्षितेयुक्त्वा यो न रक्षति शुमिषः । स संहर्षं निवृत्तस्यः श्वेव सोमनाद् आहुरः ॥
अमुशासन 61. 32-33; अमत्यागिष्ठसचिवो वश्यो लोकस्य धर्मदा । शान्ति 92. 19.

35. क्षणनीतिपल्लवेर्षो कुलधुतोऽपधार्मिकः । स्यो यदि भवेत् तं त्यजेद्वाहविनाशकम् ॥
तत्पदे तस्य कुलजे क्षणयुक्तं पुराहितः । पटुत्वमुनर्ति कृत्वा रथापवेद्वाजपहसये ॥ क्षुब्ध-
II. 274-275.

officers of state should place on the throne another scion of the royal family who is possessed of the requisite virtues. Nārada props up the theory of divine right by stating that the king secures dominion over (lit. purchases) his subjects by his austerities (performed in former lives) and therefore the king is their lord (prakīrṇaka 25). Śukranīti I. 20 also brings in the doctrine of Karma 'the king holds the earth by the actions of his former lives and by his austerities.' Compare Manu VII 111-112, Śānti 78, 36. The Śukranītisāra (IV, 7. 332-333) says that brāhmanas may even fight and destroy an oppressive kṣatriya king and would thereby incur no sin. The Yāsatīlaka (III, p. 431) gives examples of kings killed by their subjects, one being a Kāliṅga king who made a barber his commander-in-chief. In fact in all works on polity we find comparatively little about the king's rights and special privileges, but on the other hand the greatest emphasis is laid on the king's duties and responsibilities. Some works describe the king as a servant of the people whose wages or remuneration for the protection he affords is the taxes he raises. Vide Baud. Dh. S. I. 10. 1, Śukranīti I. 188, Nārada (prakīrṇaka 48), Śānti 71. 10.³⁶ It may be said here that the apparently inconsistent dicta about the divinity of the king and about his being liable to be deposed or even killed for evil deeds are delivered from two different standpoints and are addressed to different persons. The writers believed in maintaining the *status quo* about the duties of varṇas and āśramas, in the privileges of the respective castes and in the progressive deterioration of dharma in the ages to come and wanted a strong king to preserve the social order; therefore the king was raised to divinity and absolute obedience to his orders was demanded. This was addressed to the people in general. There was danger however of bad kings and ministers oppressing the people by misrule. Hence the king and his ministers were threatened with destruction and death. These dicta were principally meant for the king and his advisers.

In the Kauṭīliya V. 3 we meet with these words "In Rājāsūya and other solemn (or elaborate) sacrifices the 'rājā' gets three times the salary given to others who are as learned as he is" (samānavidyebhyas-triguṇavetanā rājā rājāsūyādīsu

36. अन्ययकारादुचिताद् भूमेः बहुभागसंज्ञितात् । कतिः स तस्य विहितः प्रजापालन-
वेतनम् ॥ नारदः (प्रकीर्णकं verse 48), बलिबलेन कुलेन दुग्धेनापापराधिनम् । शाखा-
नक्तिन लिप्तेषा वेतनेन धनागमम् ॥ शांति 71. 10 ; स्वभावाभूत्वा दास्यन्ते मज्जानां च सुपः
कुतः । अष्टम्या स्वानिरुपस्तु पादनाथं हि सर्वदा ॥ शुक नीति I. 188.

krātuṣu). Jayaswal (in 'Hindu Polity' part II p. 136) seizes upon this passage to show that the king was a salaried person like the prime minister or the commander-in-chief. The words 'in Rājagūya and other *kratus*' should have raised doubts in his mind about his interpretation, but he entirely missed the significance of the passage. Kautilya in that passage is not referring to the king himself but to his representative or deputy when the king is engaged in numerous ceremonial duties during sacrifices of long duration like the *Aśvamedha*. The *Āp. Śrautasūtra* (XX. 3. 1-2), *Baudhāyana Śrauta* XV. 4, *Satyasādhya Śr.* XIV. 1. 24-25 state that the *adhvaryu* priest was to deputize for the king when the latter was engaged in the *Aśvamedha*³⁷ (which was spread over a period of about two years). The salary referred to by Kautilya is to be paid to the *adhvaryu* when representing the king. Vide H. Dh. vol. II p. 1232 for this. In X. 3 it is said by Kautilya that a virtuous king on the eve of a battle should urge on his soldiers the fact 'I am a wage-earner like yourselves, this kingdom is to be enjoyed by me along with you. You have to strike down the enemy pointed out by me'.³⁸ Here the theory of the king being a wage-earner or a servant of the State is emphasized in a striking manner.

The word 'rājan' is derived in the *Nirukta* (II. 3) from the root 'rāj' to shine, but the *Mahābhārata* (*Sānti* 59. 125) likes to say that the king is styled 'rāja' since he keeps all people contented, that is, it derives the word 'rājan' from the root 'rañj'. Great poets like *Kālidāsa* (*Raghu* IV. 12) follow the *Mahābhārata* in this, as also in deriving the word 'ksatriya' from 'ksata' and the root 'trai', meaning one who protects from wound and injury (*Sānti* 59. 126 and *Raghu-varṇa* II. 53). Bṛ. quoted in the *Rāja. Dh. K.* (I p. 5) appears to derive the word both from 'rāj' and 'rañj' (*balena caturangena yato rañjayati prajāḥ : dīpyamānaḥ sa vapuṣā tena rājābhidhiyate*).

There are in our authorities germs of several theories about the origin of kingship. Bṛ. X. 173 (which corresponds to

37. अथ ये क्षत्रस्याभिषेकार्हेऽध्वर्युमभिविजानि । स आह । बाह्यणाञ्च राजानम्वा-
ध्वर्युरेतां द्वौ संवत्सरो राजा भविष्यति तस्य क्षुब्धपक्षे वो हारस्य न क्षुब्धविष्यते सर्वस्य ते
जास्वन्वीति । अथाध्वर्युरेतां द्वौ संवत्सरो राजा भवति । यजमान इतीतरमाचक्षते । वो. श्री.
XV. 4.

38. निदिष्टकालो धर्मिष्ठः संहस्य दण्डं द्रवात् । तत्पवेतनोरिम । भवद्भिः सह भोग्य-
मिदं राज्यम् । मयाभिहितः परोभिदन्तस्य । कीदृश्य X. 3. p. 367.

Atharvaveda VI. 87 and 88. 1-2) has been taken as an election hymn by some writers (e. g. Jayaswal in 'Hindu polity' p. 7). But one is constrained to say that it is probably nothing of the kind. The only words that may lend some colour to the theory of election are 'let all the people desire thee (as king)' in Rg. X. 173. 1, but those words may apply as a benediction even in the case of one who is already a king. In the Atharvaveda III. 4. 2 there³⁹ is a reference to the election of a king by the people 'the people (visah) chose thee to govern the kingdom, these quarters, the five goddesses (chose thee)'. In Atharvaveda III. 5, 6 and 7 also there is a faint allusion to the election of a king by nobles, king-makers, sūtas and headmen of villages, by the clever makers of chariots and the skilled workers in metals. These 'king-makers' are called 'ratnins' in other Vedic texts and the Tai. Br. I. 7.3 states in connection with the twelve offerings in the Rājasūya called 'ratnīnām havīṃsi' that the 'ratnins' give the (rāṣṭra) kingdom (to the king). Vide H. Dh. vol. II p. 1215 n. 2648 and p. 1216 for the 'ratnins'. So it appears that the conception was that the king got the kingdom from nobles, high functionaries and the common people. For the coronation bath (and its implications) mentioned in the Ait. Br. vide note 105 below. The Ayodhyākāṇḍa (chap. 1 and 2) describes how Daśaratha when he grew old desired to make his eldest son Rāma the Crown Prince (yuvarāja), how he called together an assembly of vassal kings, citizens and rural inhabitants and placed before the assembly his idea, how they acclaimed loudly the old emperor's proposal and readily gave their consent. This shows that though kingship became hereditary in course of time some element of popular approval was sought for. But such passages referring to the approval of the people cannot be stretched to mean that the king was chosen by a parliament the members of which were elected by the people. All that happened appears to have been only this that citizens that approved assembled spontaneously and expressed their feelings in the assembly. In the Rāmāyaṇa II. 67. 2 it is said that when Daśaratha died sages like Mārkaṇḍeya and Vāmadeva declared along with the *amṛtyas* in the presence of the family priest (purohita) Vasiṣṭha that as Rāma and Lakṣmana had gone into exile and Bharata and Śatrughna were in the Kekaya country, some scion

39. त्वं विशो वृजतां राज्याय त्वामिमाः पवित्राः पञ्च देवीः । अथर्व III. 4. 2; ये राजानो राजकुलः सुता ग्रामपञ्च ये । उपर्यागं पर्जन्यो त्वं सर्वान्कुलमित्रो जनान् । अथर्व III. 5. 7.

of the Ikṣvāku race should be chosen as king. These sages and ministers are spoken of as king-makers ('rāja-kartārah') here and in chap. 79. 1. In the Ādiparva 44. 6 it is stated that all the citizens of the capital in one voice elected Janamejaya, though a boy, as a king on the death of Parīkṣit and Janamejaya ruled with the help of his ministers and purohita. There are historical examples of the election of kings. The *ksatrapa* Rudradāman was elected king by the people of Surāstra (who at one time formed a republic, acc. to Kautilya XI 1) and he took an oath as stated in his Junagadh inscription in the year 72 (150 A. D.).⁴⁰ Vide E. I. Vol. VIII p. 36 at p. 40. Gopāla, the founder of the Pāla dynasty of Bengal (730-740 A. D.), was elected a king (E. I. Vol. IV. p. 243 at p. 248 and Jayaswal's 'History of India,' 150-350 A. D. pp. 44-45). It appears that it was the business of the chief ministers and brāhmanas to propose somebody as king and such persons were called 'rājakartārah'. In Ayodhyā 67. 8 they say 'our country is without a ruler and may therefore encounter disaster'. Arājaka does not necessarily mean in Ayodhyā 67 anarchy but a condition in which there is no king nor ruler. Though this is so, it is not possible to agree with Mr. K. P. Jayaswal ('Hindu Polity', part I, pp. 97-98, 134, 173) that 'arājaka' was 'an idealistic constitution, that it was an extreme democracy almost Tolstolian in ideal, that it was based on a legal and communal basis, that it was a case of extreme individualism in which government itself was regarded as an evil.' Ayodhyā 67. 8-31, Ādi 41. 27 ff., Santi 67. 3 ff., Matsyapurāṇa 225. 8-9 are the principal passages on arājaka. A perusal of these will convince any one not carried away by the over-patriotic desire to find the latest European thought in our ancient books that *arājaka* was viewed as a state of chaos and the negation of any constitution; that when a country was without a ruler, no private property in anything existed or was respected and people preyed upon each other like fishes (Ayodhyā 67. 31) and that no Tolstolian ideals were present before the eyes of the writers that drew such a harrowing picture of a State without a ruler. The famous Chinese traveller Hiouen T'sang notices (vide Beal's Buddhist Records of the Western World, 1884, vol. I pp. 210-216) that when Rājyavardhana was

40. आ वर्मात्मसूयवित्तसमुदितराजलक्ष्मीधारणमुपातः सर्ववर्णैरभिगम्य रक्षणार्थं प्रतिवेद्वेन आ गोपीचूडामालादुपवचमिदुतिष्ठतसर्वमहिज्जेनामय संघामेव । E. I. vol. VIII, p. 36 at p. 40; मातृपन्थावमपेक्षितं बहुतिमित्तेभ्यः करं द्राक्षितः श्रीगोपाल इति सिरीक्षितरिं चूडामणिस्तुतः ॥ E. I. vol. IV, p. 243 at p. 248 about गोपाल.

treacherously murdered by king Śaśāṅka, the great minister Bhaṇḍin (who was also a cousin of Harṣa) called an assembly of ministers and made to the young Harṣavardhana a proposal to assume the royal authority, which proposal was backed up by all the ministers and magistrates, that thereupon Harṣa agreed to become king after consulting the oracle of Avalokiteśvara Bodhisattva. After the death of Parameśvaravarman II (of the Pallava dynasty), when the Pallava kingdom was subject to anarchy, the subjects chose a king. For the details of this election, vide the important constitutional document of the Vairakūṭha Perumal temple (Dr. C. Minakshi's 'Administration and Social life under the Pallavas', 1938, p. 38). The Rājataranginī narrates (V. 461-463) that Yaśaskara who was originally a poor man was chosen as king by the brāhmaṇas.

In some other places a theory somewhat like the theory of social contract expounded by Rousseau is adumbrated. The theory of social contract is presented in modern times under two forms. In one there is supposed to be a tacit or explicit agreement between the Government and the people. In the 2nd form it is supposed that a political society was constituted by a compact among individuals (to which the ruler was not a party). This theory puts forward the notion that government depended on the consent of the people. Kauṭilya (I. 13) refers to the legend that Manu Vaiśvata was made a king by the people, who agreed to assign one-sixth of the grain raised by them as the king's share in return for the protection afforded by him. But Kauṭilya is silent as to whether Manu made any promise to the people. Śāntiparva, chap. 59, states how Vainya, the first king, was called upon by the gods and sages to take an oath and how he promised them that he would protect the world, and would carry out his duties as laid down in the science of government and not act at his sweet will.⁴¹ When this theory of an agreement between the king who took an oath and the people spread among the people, the theory of the divine right of kings, if ever seriously held, would recede more and more into the back-ground. Vide Dr. Beni Prasad's 'Theory of Government in Ancient India' chap. VIII and 'Pre-Buddhist India' (1939) by Mr. R. N. Mehta, chap. II pp. 79 ff. and 101 for election of

41. प्रतिज्ञां चाभिरुहस्व मनसा कर्मणा निरा । पालयिष्याम्यहं भूमिं बहुदेवैः ॥
आसक्तुः ॥ पञ्चाय धर्मो भीष्मको दृष्टनीतिपरायणः । तमद्वाङ्मनः कस्मिन्मनि स्वयं न
कदाचन ॥ शान्ति १. 106-108.

kings and for Buddhist theories of government. It is not possible to hold as Jayaswal, U. Ghosal and others do (e. g. 'Manu and Yājñavalkya' II, 'Hindu Polity' part II pp. 54-57) that the theory of social contract was the earlier one and that the theory of divine right of kings was later on propounded by the Manusmṛiti to support the brāhmaṇa empire of Puṣyamitra. Jayaswal is wrong in saying (in 'Hindu Polity' part II p. 57) 'the theory of the Mānava was never approved or adopted by a single subsequent law-book'. It has been shown above that Nārada and others espoused the same theory. Manu himself eulogises the supreme power of daṇḍa over the king himself (Manu VII. 28). He makes use of both the theories as occasion demands.

The germ of the theory of Divine Right of kings probably goes back even to the Rgveda. Rg. IV. 42 is a hymn of king Trasadasyu, son of Purukutsa. Some of the ideas therein are startling enough. He says 'the gods rely on the might of Varuṇa, while I am the lord of the people (verse 1, *kratum sacante Varuṇasya devā rājāmi kṛteḥ &c*); I am Indra and Varuṇa, I am the wide and the deep Heaven and Earth, I am the son of Aditi (verses 3 and 4)'. Here there is an explicit claim by a king to be identical with the mightiest and greatest gods of the Vedic pantheon. In the Atharvaveda VI. 87. 1-2 it is said about the king 'May all the people long for you, may not the kingdom be lost from your hands, may you stand firm in the world like Indra and may you uphold the kingdom'. In the Śatapatha Brāhmaṇa V. 1. 5. 14 (when describing the shooting of arrows in the Vajapeya) it is said 'the *rājanya* is most manifestly of Prajāpati, while being one he rules over many'. Here the position of the *rājanya* appears to be regarded as due to his being the representative of Prajāpati. In the Śat. Br. V. 4. 3. 4 the sacrificer in the Rājāsūya is identified with Indra and it is said that that position is due to two causes viz. (1) his being a member of the kṣatriya order and (2) his participating in a solemn sacrifice. But passages like the last and Śat. Br. V. 1. 3. 4, V. 1. 4. 2, V. 2. 2. 14 *should not* be relied upon in support of the theory of the divine right of kings (as done by U. Ghoshal in 'Hindu Political Theories', pp. 28-29), since every participator (whether a brāhmaṇa or a kṣatriya) in such solemn sacrifices as the Agnistoma and Vajapeya was supposed to possess a celestial body after *dikṣā* and Pravargya and was often spoken of as identified with Indra and other gods. Viśvarūpa on Yāj. I. 350 quotes a long vedic passage (*āgama*) in which it is stated 'the gods said to Prajāpati 'we shall arrange for a king in human

form by taking from the moon, the sun, Indra, Viṣṇu, Vaiśravaṇa (Kubera) and Yama respectively majesty, brilliance, valour, victoriousness, liberality and control" and that the king thus formed asked the gods to give to him Dharma as his friend and that then he would protect the people and then the gods made Dharma (i. e. danda) his friend.

We may examine the theories of the origin of kingship in the Mahābhārata. The Śāntiparva deals with this subject in two places, in chap. 59 and 67. In chap. 59 Yudhiṣṭhira asks the great warrior and statesman Bhīṣma how the title 'king' arose and how one man, who has fundamentally the same physical and mental equipment as other men, rules over all men. These are not really two questions but only two aspects of the same question. Then Bhīṣma starts by saying that there was originally a state of perfection (*Kṛtāyuga*) in which there was no king, no kingdom, no punishment and no chastiser. Gradually *moha* (delusion or aberration of mind) spread among people and then greed, sexual desire and passions arose and the Vedas and dharma perished. The gods did not receive offerings and went to Brahminā, who composed a vast treatise as stated above (p. 4) that dealt with the four goals of existence for the benefit of the world and that was the cream of learning. Then the gods went to Viṣṇu and requested him to appoint (as king) one who deserved to be the best among men. Viṣṇu created a son from his mind called Virajas who did not want to be a king. Fifth in descent from Virajas was Vena who destroyed dharma and so the brāhmaṇas killed him and from his right arm they churned Prthu, handsome, well-armed and proficient in the Vedas, Vedāṅgas and Dandaniti. Gods and sages asked him to follow settled dharma, to control his senses and to take an oath (set out above in note 41). He was crowned by the gods and sages for the protection of the people. Viṣṇu himself established him saying 'Oh king, no man will go contrary to your order' and then Viṣṇu entered the king Prthu (verse 128) and it is therefore that this world since then bows to kings as to gods. In this account the oath administered to Prthu was so administered by the gods and sages and not by the people in the mass, nor does Prthu expressly promise anything to the people as such. Probably it was thought that the promise to the sages was impliedly a promise to the people in general. But the account, such as it is, rather appears to emphasize the divine origin of kingship.

Chap. 67 contains a much shorter version of the origin of kingship, probably because a few chapters before another version has already been given or because it embodies the views of some prior work or teacher. It begins by saying that the most desirable thing for a State is to crown a king, that in a kingless country there is no dharma, no security of life nor of property, that therefore the gods appointed kings for protecting people. Then it proceeds to say that the people assembled and made compacts (*samajān*) amongst themselves that whoever would commit libel or assault or adultery and break the compacts made by the people should be abandoned. All people went to Brahṃā and requested him to appoint a ruler whom they would all honour and who would protect them. Brahṃā appointed Manu for that purpose, but Manu did not at first like the idea, saying 'Government is a very difficult business among men who are always deceitful and I am afraid of the sinful acts of men'. The people asked him not to be afraid as the sins committed by men will affect the perpetrators (and not Manu) and that the people would give him shares of produce (one-tenth of grain, one-fifth of cattle, one-fourth of their dharma &c.). Manu then agreed, went round the world, terrorizing evil-doers and making them conform to dharma. This story about Manu and the people is alluded to by Kauṭilya (vide p. 31 above). Even here Manu promises nothing expressly, while the people agree to pay taxes and answer for their own sins. There is no doubt that some of the details in the two chapters are different. In chap. 67 there is no reference to an original state of perfection nor to a vast work nor to any oath; so also in one it is Vainya who becomes the first king and in the other it is Manu. But the conception in both is mythological and the fundamental fact in both is the same. God gives a king to the people in both, when they were without a king and degeneracy had set in. Though there is no offer to give a share in chap. 59 yet it is to be inferred from the *pratijñā* of Vainya that every subsequent king was deemed to do the same. It may be said that in chap. 67 there is a blending of the theory of Divine Right and of an original compact between king and people. In both, however, the emphasis is on the theory of the divine origin of kingship. Śānti 67.4 states 'one desirous of prosperity should honour the king as one honours Indra', while chap. 59.139 asks 'what is the cause but the divine character (the king possesses) on account of which people remain under his control'? It must be said that in both

chapters of the Śāntiparva there is no proper theory of contract between king and people.

The Nārada-smṛti as indicated above (pp. 23, 27 and note 27) is a thorough-going advocate of the theory of divine right. It says (prakīrnaka 20-22) 'It is Indra himself who moves about on the earth as king; people can nowhere live after transgressing his orders. Since the privilege of protection is his because of his supreme power (majesty) and on account of the fact that he is benign to all creatures, the settled rule is that whatever a king does is right. Just as the husband, though weak, must be honoured by the wife, so a ruler though devoid of qualities must be honoured by his subjects'. Verse 25 inculcates the duty of obedience to the king.

According to Mr. J. N. Figgis in his book 'The divine right of kings' (1934) pp. 5-6, the theory of the Divine Right of kings in its completest form involved the following propositions: (I) monarchy is a divinely ordained institution; (II) hereditary right is indefeasible i. e. the right acquired by birth and descending by the law of primogeniture cannot be forfeited through any acts of usurpation, or by any incapacity of the heirs or by any act of deposition; (III) kings are accountable to God alone, i. e. a limited monarchy is a contradiction in terms; (IV) non-resistance and passive obedience are enjoined by God i. e. in any circumstances resistance to the king is a sin and leads to damnation and that when the king issues a command directly contrary to God's law, the latter is to be obeyed and also all penalties attached to the breach of the king's law are to be patiently borne. This theory was very much to the fore in the 16th and 17th centuries when in Europe theology and politics were in close union.

It is to be seen how far the ancient Hindu theory agreed with this full-fledged theory of the divine right of kings. As regards proposition I it has been shown above that the Manusmṛti, the Mahābhārata and other works held that the king was either God himself, or god's vicar or vicegerent performing functions similar to those of several gods. As regards proposition II all Sanskrit works recognised hereditary right and primogeniture, but they allowed exceptions as will be shown later on. Our ancient books did not accept the third and the fourth propositions *in toto*. They say that the king cannot do as he likes, that he has to carry out the dictates of dharma, his

power to make new rules is limited and if he does not act up to the rules of dharma he may be deposed, disobeyed or killed. Vide quotations from Sukraniti and Anuśāsanaparva cited above. When Manu (VII 111-112) says that a king who harasses his kingdom loses his life, his family and his kingdom, it is implied that people are not bound to suffer silently all the wrongs heaped upon them by a bad king but that they may turn round and either depose him or kill him. Fick (pp. 103-104) gives examples from the Buddhist Jātakas where bad kings were killed by the people and others were elected in their place. There is no doubt that obedience to the king is enjoined by Nārada and others, but it is due to the king only so long as he does not swerve from the path of right and virtue. Nārada⁴² (prakīrṇaka verses 12 and 32) says 'on account of his majesty and sanctity a king and brāhmaṇa are not to be abused if they do not swerve from the right path; one should not treat with contempt or scold the king, one should abide by his order, since (the penalty of) death may follow from violating it (king's order)'. Here the duty of obedience is not based on the divine origin of kingship, but on the practical worldly ground that an offended king may punish with death. Nārada's doctrine does not lead to the requirement of absolute submission and non-resistance to a wicked king.

It is impossible to hold that the theory of divine right was put forward as a counterblast to the theory of social contract. The theory of divine right would arise very naturally even in the oldest days, while the theory of social contract is the product of a more advanced stage of political thought. The theory of divine right is not more absurd than the theory of social contract and was popularly held not only in India, but in many Christian countries, relying on passages in the Bible such as Daniel 4 and Romans 13, 1-7. The theory of divine right was circumscribed in India by another theory from very ancient times. The cry of the American colonists against England in the 18th century was that taxation and representation went hand in hand; that of the ancient Hindu political and dharmaśāstra writers was that taxation and protection went hand in hand (see n. 45). Band. Dh. S. I 10. 1. says 'the king being hired for the sixth

42. अग्निर्देव्यावनिन्द्यौ च राजा ब्राह्मण एव च । द्वैतमित्याहुः पितृत्वाच्च यदि न स्वात्पश्यन्त्युतः ॥ तयः कीदा मजा राज्ञा मधुरासां तसो वृषः । ततस्तद्वचसि स्थेयं वार्तां चामां तदाश्रया ॥ तस्मात् सै नावजाभीषाकाक्रोशेय विशेषतः । आज्ञासां चास्य तिलेन वृक्षः स्यात्तद्व्यतिक्रमात् ॥ नारद (प्रकीर्णक 12, 25, 32). Vide Manu VII. 12-13, Gautama XI. 32. (rājācāryāvanindyaū).

part (that he takes as tax) should protect the subjects'. Yāj. I. 337 states 'The king shares half of that evil which the subjects do when not protected by the king, since he takes taxes (from the people)' and Yāj. I. 334 lays down that a king who protects according to *sāstras* receives the 6th part of the merit (*puṇya*) of the subjects. Śāntiparva (57. 44-45) states 'One should abandon six persons like a leaking boat in the ocean viz. a teacher who does not explain, a priest who does not study the Veda, a king who does not protect &c.' Śākrantī I. 131 affirms 'the gods destroy a king who does not protect, a brāhmaṇa who does not perform austerities, a wealthy man who makes no gifts.' Vide Vasiṣṭha I. 44-46, Gaut. XI. 11, Viṣṇu Dh. 8. III. 28, Udyogaparva 132. 12, Śānti 67. 27 (4th part of *puṇya*), Śānti 24. 12 (4th part), Śānti 72. 20, Āśramavāsi 3.40, Anuśāsana 61.34 and 36, Kām. II. 10 for the idea that the king receives a part (generally 6th part) of the *puṇya* (and also sin) of the people. The king had to protect even forest hermits who paid no taxes, as he would share in their *puṇya*⁴³. Vide Rāmāyana III. 6. 14. Kalidāsa echoes this in the Śakuntala II. 13. Ādiparva 213. 9 looks upon the king who takes the sixth part as tax and affords no protection as the arch-sinner in the world. Śānti 71. 29 says that the spiritual merit that a king gathers by protection according to the sacred code yields rewards for him in heaven for ten thousand years.

From the preceding pages it is clear that the following are put forward as the grounds on which the obligation to render obedience to the ruler is based: (1) the king has divinity in him, (2) the great utility of the ruler affording protection as regards life, liberty and property, (3) the fear of punishment (Manu VII. 22), (4) a primeval contract between the ruler and the people, (5) the interdependence of the ruler and the people as parts of one organism (viz. the State). Vide Medhātithi on Manu IX. 294 for this last.

Who should be king? There were several views on this point. One meaning of the word 'rājan' is 'kṣatriya'. Manu (VII. 1) states that he will declare *rājadharmas* and in the very next verse he employs the word 'kṣatriya' and remarks that a kṣatriya who has undergone the upanayana *śaṅskāra* (or *abhiṣeka* according to some commentators) should afford protection to all in his kingdom. Therefore a kṣatriya is the most proper person

43. यत्करोति परं धर्मं क्षत्रिभ्यः कदाचित् । तत्र राज्ञश्चतुर्भागः यज्ञा धर्मेण राजतः ॥ अरण्यकाण्ड 6. 14.

to be a king. Some of the works such as the *Rājadharmakaustubha*, *Rājanītiprakāśa*, the *Nītimayūkha*, and *Par. M.* vol. I, pp. 449-451 refer to the discussion in the *Pūrvamīmāṃsā* works on the topic of the *Aveṣṭi* sacrifice. On *Jaimini II. 3. 3* Śābara and Kumārila hold an elaborate discussion. The Vedic texts say 'rāja rājasūyena yajeta' ('the Rājasūya should be performed by a rājan'). Among the numerous constituents of that sacrifice there is an *iṣṭi* called *Aveṣṭi*, with reference to which a Vedic passage says 'if a brāhmaṇa performs aveṣṭi, he places the *āhuti* (offering) for Bṛhaspati in the middle; if a kṣatriya performs it the offering to Indra is placed in the middle of the offerings; &c.'. The *pūrvapakṣa* (prima facie view) is that the word 'rājan' applies to any one (whether a brāhmaṇa, a kṣatriya or a vaiśya) who protects the people. The *sādhānta* (the established conclusion) is that in this text the word *rājan* means a kṣatriya and that by the other passage about brāhmaṇas &c. what is meant is that brāhmaṇas and vaiśyas may independently perform the *Aveṣṭi* sacrifice, but that only a kṣatriya can perform the *Aveṣṭi* as part of the Rājasūya rites. Śābara makes the interesting remark that in the Āndhra country the word 'rājan' is applied to a man of the kṣatriya caste even though he does not pursue the occupation of protecting a country or a city; while Kumārila observes that persons of all the four varṇas are seen as rulers of kingdoms.⁴⁴ In the literature on dharmasāstra the word 'rājan' is understood in the sense of 'one who rules over or protects a country' (i. e. the *pūrvapakṣa* view in the *Pūrvamīmāṃsā*). Vide *Medhātithi* on *Manu VII. 1*. *Aparārka*⁴⁵ (on *Yāj. I. 366*) remarks "when he who is not a kṣatriya performs the work of a kṣatriya (i. e. becomes a king) he should do all this (that a kṣatriya king has to do) since the maxim is 'that by assuming the position or the work of a particular person or thing one receives what is due to that other' and the

44. अवेष्टी यज्ञसंयोगकस्तुप्रधानमुच्यते । जै. II, 3, 3 : मनु जनपदपुरारिरक्षणवृत्ति-
मनुपूर्वादिनापि अत्रापि राजशब्दमात्राः प्रयुज्ये यथोक्तारः । शबर (p. 580) : तत्र राज्य-
मभिधेयेन अत्रारोपि यथाः कुर्वाणा दृश्यन्ते । तस्मात्सर्वे राजानः । तन्त्रचार्तिक p. 580.

45. एतत्सर्वं अत्रियस्य राज्यं कुर्वतः प्रविहितम् । यथा पुनरत्रियः कविपकार्यं
कुर्वीतदानेनाप्येतत्सर्वमनुजेभ्यः । तत्कार्यापिरथा तद्धर्मलाभः—इति न्यायात् । करदानमनुक-
वाञ्छ प्रजापालनस्य । सर्वो हि धर्मं यच्छुक्त्वात्मसमवापि प्रयोजनमुद्दिशति । न च करदानस्य
स्वमुत्तेरन्वयप्रयोजनमस्ति । तस्मात्करनादुद्दानेन प्रजापालनं विधायमिति सिद्धम् । अपरार्क on
पा. I. 366. This maxim is taken from the *mahābhāṣya* on the first *vārtika* on
Yājñinī I. 1. 56 'तस्मै यो यस्य पश्ये भवति लभतेऽसौ तत्कार्याणि । तथा । उपारथायस्य
शिक्षो वाग्यकुलापि यत्वाज्ञानादीनि लभते' Kiehlhorn's ed. vol. I, p. 133. Its
form in grammatical works is तस्मात्तत्तत् तद्धर्मलाभः ।

duty of protecting the subjects arises from the fact of taking taxes from them. For everyone when giving wealth does so with reference to a purpose related to himself and there is no purpose except one's protection that is intended in rendering taxes. Hence it is established that whoever receives taxes must secure protection of the subjects". According to Kullūka the word 'rājan' means 'any person who is crowned king and protects the country and capital' and is not used in the sense of 'a person of the ksatriya caste'. The Rājanītiratnākara (p. 2) after citing Kullūka and Kāmadhenu states that many hold that 'rājan' means 'any one who takes upon himself the task of protecting the subjects'. The Rājanītiprakāśa holds⁴⁶ a long discussion (pp. 10-15), states that the word 'rājan' may have three meanings viz. any one who protects people, a ksatriya in general or a ksatriya who is crowned and ultimately gives it as its opinion that the word 'rājan' is applied in popular usage to any one, whether crowned as king or not, who is the ruler of a country. The Vaijayanti on Viṣṇu Dh. 8. III. 44 explains 'rājñām' as 'of ksatriyas' by following the Avesti maxim.

Several brāhmaṇa families founded kingdoms and empires. Pūṣyamitra, founder of the Śuṅga empire, was a brāhmaṇa (Harivamśa III. 2. 35 ff, E. I. vol. 20 p. 54); the Kāṇvāyanas, who followed the Śuṅgas, were brāhmaṇas and so were the Vākātakas, the Kadambas (vide Talagunda pillar Inscription of Kakusthavarmā in E. I. vol. VIII p. 24) and several others. Vide H. Dh. vol. II pp. 122-123 for texts on the question as to when a brāhmaṇa should follow the profession of arms. Manu XII. 100 states that a brāhmaṇa who knows the Veda deserves to be made a king, a commander-in-chief, the wielder of the power of punishment. Kumārila's dictum that persons of all varṇas are seen to be rulers has been already quoted. Gopāla the founder of the Pāla dynasty of Bengal was a śūdra. Manu IV. 61 directs a brāhmaṇa not to stay in a country where the ruler was a śūdra. Medhatithi⁴⁷ explains this by saying

46. सुपद्यहणेन जनपदैर्बर्षवतोऽधिकारमाह । प्रमाणान्तरमुदा ह्यत्र धर्मा जप्यन्ते न सर्वे वेदमुदाः । मेधा. on मनु VII. 1; तथा विज्ञानेऽपि अभिवेकादिसुपद्यहण्य राज्ञः राजा-पालनं परो धर्मः । तथापि सुपद्यहणसमन्विताहारादनभिवेकपि जनपदैर्बर्षवतो लोकपतिश्च राजशब्दो वर्तते । राजनीतिर. p. 14; अथोदित्वापेन राज्ञां क्षत्रियाणां न पार्श्वानामेव वैजयन्ती.

47. यो जनपदः शुद्रवशावर्तो तत्र न वसेत् । मन्विसेनापतिदण्डकारिकायाः सम यक्ष-तयो राज्ञे यत्र सर्वाः शुद्रजातीयाः तत्र निवासनिषेधोऽयम् । मेधा. on मनु IV. 61. It is not clear who दण्डकारिक (inflicter of punishment?) is. Should we read दण्डपाशिक (as in the Valabhi plates in E. I. XI. pp. 83 and 94 or XV. p. 257) or दण्डनायक (as in E. I. IX. p. 289 or E. I. XX. p. 7)?

that the prohibition applies only to a country where all the seven high functionaries such as the chief minister, the commander-in-chief are of the śūdra caste; compare Āp. Dh. S. I. 11. 32. 18. Manu's dictum related to a time when there was hardly any śūdra king. But the logic of facts was too much for Medhātithi who had to twist the plain words of Manu. Medhātithi on Manu VIII. 1 remarks that 'persons of other varṇas who subsist by the mode prescribed for ksatriyas have power over the kingdom and have to protect the people'. Śāntiparva remarks that whoever protects people from the hordes of dasyus and wields the power of punishment according to smṛti rules must be considered as king. The Harivaṃśa (III. 3. 6 'aksatriyāśca rājāno viprah śūdropajivinah') and some of the Purāṇas in depicting the awful degeneracy of the Kali age in a prophetic strain state that the kings in the Kali age will be mostly śūdras and that śūdra kings will celebrate Āśvamedha sacrifices. Vide, for example, Matsya 144.40 and 43 and Līṅga-purāṇa 40. 7 and 42. Hiouen Tsaung notices that in the first half of the 7th century A. D. Sind was under a śūdra king (Beal's B. R. W. W. vol. II. p. 272).

It was almost a universal rule that a male alone was to be the ruler. There appear to have been stray exceptions. The Śāntiparva (33.43-46) enjoins⁴⁸ upon a conqueror the duty to place on the throne of a conquered country the brother, son or grandson of the vanquished king and if no prince be available, then to crown even the daughter of the late king. The Rājatarāṅgiṇī (V. 249 and VI. 332) describes at great length the regime of the notorious queens Sugandhā (904-906 A. D.) and Diddā (980-81 A. D.) of Kashmir. In India for many centuries there has been no Salic Law expressly declaring that daughters cannot inherit land, though on account of the general position of women, the requirements of disturbed times and military necessity women did not generally assume the role of sovereigns. In a copper-plate grant from Ganjam (of about the 13th century) it is stated that when a certain king named Subhākara died his queen ascended the throne and after her her daughter Dandimahādevī, who is styled 'parama-bhaṭṭārīkā-mahārājādhīrājā-parameśvarī' ruled the earth for a long time (E. I. vol. VI p. 133 at p. 138). Whether the grandiloquent titles were deserved by the queen or were only the exaggerated effusions of a courtier,

48. तेषां पुराणि राष्ट्रानि कया राजन्व सङ्गृह्यतः। प्रापुन पुत्रांश्च पौत्रांश्च स्वे स्वे राज्ये-
नियेषन्व * ... कुमारो जातिस्तेषां न कन्यास्तजामिष्यन्व। शान्ति 33. 43 and 45.

It is clear that the widow and daughter of the last male ruler succeeded to the throne. The *Raghuvarṇa* (XIX. 55, 57) states that the widowed queen of king Agnivarṇa sat on the throne and carried on the government with the help of hereditary ministers.

Apart from conquest and election in rare cases, monarchy was hereditary and generally descended by primogeniture. The passage from the *Satapatha Brāhmaṇa* (XII. 9.3, 1 and 3) mentioning the descent of kingship for ten generations in succession has already been referred to (p. 26). Though succession was hereditary it was the general rule that the eldest son ascended the throne when the reigning monarch died or abdicated. The rights of the eldest son or daughter as against the younger son or daughter were very jealously guarded in the vedic age. It has already been shown how marrying before one's elder brother or sister was condemned in the vedic age and also in the times of the *smṛtis* (H. Dh. II. pp. 546-549). Even the *Rgveda* several times refers to *jyauṣṭhya* (rights of seniority) of Indra (Rg. I. 5.6, III. 50.3). The *Tai. S. II. 2.11.5* states that the gods agreed to treat Indra as the 'jyestha' (the eldest) and *Tai. S. II. 5.2.7* refers to the ancient practice of giving all wealth (of the father) to the eldest son. The *Alt. Br. 19.4* narrates the story that the gods did not accept Indra's position as the eldest and most exalted among them and that Indra then induced Bṛhaspati to perform the *Dvādaśāha* sacrifice for him, whereby he secured that position. The *Nirukta II. 10* sets out the interesting story that Devāpi and Śantanu were two brothers, scions of the Kuru family, of whom Devāpi was the eldest, but Śantanu the younger one got himself crowned king and so Devāpi practised austerities. The result was that there was a drought in Śantanu's kingdom for 12 years. The brāhmanas said to him 'You are guilty of having violated dharma in that passing over the eldest brother you got yourself crowned. Therefore God does not send down rain'. Then Śantanu desired to give the kingdom to Devāpi, who however said that he would be his purohita and make him perform a sacrifice. The *Rgveda* hymn X. 98 was then composed by Devāpi for bringing down rain. This story shows how long before Yaska the popular belief was that it was a great sin to

49. *सत्याज्येष्ठं पुत्रं धनेन निर्वसाद्यवन्ति* (मै. सं. II. 5. 2. 7. *Āp. Dh. S.* (II. 6, 14.12-13) cites this text and says that it is a mere *amucyāna* and not a *vidhi* and gives it as its own view that sons equally share the paternal wealth.

pass over an elder brother in marriage and other matters and doing so brought down the serious displeasure of the gods. Vide *Brhad-devatā* VII. 156-157 and VIII. 1-9 for the same story in a little greater detail, viz. that Devāpi suffered from a skin disease, that when Devāpi said to the subjects that he did not deserve the kingdom and that Śantanu should be their king, the subjects crowned Śantanu as king. When Yayāti desired to pass over his elder sons Yadu and others because they disobeyed him and wanted to make the younger Pūru his successor the brāhmanas and citizens protested 'How can the younger son secure the kingdom passing over the elder one⁵⁰?' Arjuna upbraids Bhlmasena who got enraged against Yudhiṣṭhira 'who would act against one's eldest brother that follows the path of dharma?' (*Sabhā* 68.8). In the *Rāmāyaṇa*⁵¹ Daśaratha addresses Rāma (II. 3.40) 'you are born of my eldest queen, who is of the same class as myself (i.e. of ksatriya blood)' and Vasīṣṭha says to Rāma 'Among all Ikṣvākus the eldest son becomes the king; a younger brother is not crowned king when the elder exists' (II. 110.36). The *Ayodhyakāṇḍa* in several places (8.23-24, 101.2) reiterates the idea that all the sons of a king do not succeed but only the eldest, although the other sons may be equally fit and endowed with qualities. Kautīliya (I. 17)⁵² states that people esteem rulership going to the eldest except in the case of some calamity. *Manu* IX. 106 says that by the very birth of the eldest son, a man becomes free from the debt he owes to his *pitṛs* and therefore the eldest deserves to get everything from the father. The *Rājadharmak.* (pp. 234-235) after quoting the *Kalikāpurāṇa* and the *Rāmāyaṇa* lays down the following propositions: (1) the eldest son of a king alone succeeds in preference to the eleven kinds of secondary sons (whether he is junior or senior in age); (2) if the son of a junior queen (of the same caste) is senior by birth, he succeeds in preference to the son of the senior queen,

50. कथं ज्येष्ठानतिक्रम्य कनीषाथं राज्यमर्हति ? ... मातापित्रोर्बन्धनकुञ्जितः पश्यन्तं यः सुतः । स पुत्रः दुष्टवयस्य वर्तते पितृमातृषु ॥ आदिपर्व 85, 23 and 25 = वायु 93, 79 and 81.

51. ज्येष्ठायामपि मे पत्न्यां सवृद्धां सवृद्धः सुतः । उत्पन्नत्वं ह्यनज्येष्ठो मम रामात्मजः मिथः । ... तस्मात्वं दुष्टवयसि यौधर्यमवाप्नुहि । अपोरथाकाण्ड II. 3, 39-41. These are quoted in *Rājadharmako.* p. 234 and *Rājadharmakāṇḍ* II. p. 13 (with variations). इत्याहुः । हि सर्वेषां राजा भवति पूर्वजः । पूर्वजे नावराः पुत्रो ज्येष्ठो राजाभिविचरते ॥ अपोरथा 110. 36.

52. अन्यत्रापि वैश्वर्यं ज्येष्ठभागी (!) तु पूर्यते । कौटिल्य I. 17 last verse but one.

Sometimes a king selected a younger son to succeed him. There are famous historical examples. The great Gupta Emperor Samudragupta though a younger son was nominated by his father Chandragupta I to succeed and by his brilliant and most successful career Samudragupta more than justified the choice. Vide the Allahabad Pillar Inscription verse 4 (Gupta Inscriptions p. 6). Similarly Chandragupta II, though younger, was nominated by his father Samudragupta to succeed himself. Yayāti selected his youngest son Pūru because he was devoted and obedient and the eldest and other sons disobeyed him. Vide Adiparva chap. 75 ff. and above p. 42. The principle of hereditary succession was so strong that even a boy king was placed on the throne. Vide Raghu. XVIII 39.

In almost all works on rājasāstra there is a disquisition on the qualities that a good king should possess. Vide Kauṭ. VI 1, Manu VII 32-44, Yāj. I. 309-311 and 334, Śaṅkha-Likhita quoted in R. D. K. III. p. 14 and Rājāniti-prakāśa p. 116, Śānti 57. 12 ff. and 70, Kām. I. 31-32, IV. 6-24, XV. 31, Mānasollāsa II. 1. 1-9 (p. 29), Śukra I. 73-86, Viṣṇudharmottara II. 3. Only one or two passages can be set out here. Yāj. (I. 309-311 and 334) states 'a king should have great energy, should be generous, mindful of past (good or bad) turns done by others, dependent on those who are advanced (in austerities, knowledge and experience), possessed of a disciplined mind, endowed with an even temper (in good or bad luck), born of a noble family (on both sides), truthful, pure (in body and mind), prompt in action, of strong memory, not mean-minded, not harsh (in words or acts), observant of the rules of *dharma* (as to varnas and āśramas), free from vices, talented, brave, clever in concealing secrets (or acc. to Bhāruchi and Aparārka 'clever in scenting the secrets of his enemies'), guarding the weak points of his state, well-taught as regards logic, the science of government, the science of wealth and the three vedas. He should be forbearing towards brāhmanas, straightforward towards his friends, wrathful towards his enemies, and should be (kind) like a father towards his servants and subjects'. Manu VII 32 is very similar to Yāj. I. 334. The Mit. says that the qualities specified in Yāj. I. 309-311 are *antarāṅga* (inward or more essential). The 2nd quality 'sthūla-lakṣa' occurs also in the inscription of Rudradāman (E. I. vol. VIII. at p. 44). From I. 312 Yāj. states the *baharāṅga* qualities viz. selection of ministers, purohita and sacrificial priests, gifts to worthy brāhmanas, protection &c.

Kautilya VI. 1 contains several lists of the king's qualities from several points of view. First, there is a list of qualities that make the king win the heart of the people (or make him approachable) viz. being of a noble family, godly, spirited, consulting the aged, virtuous, truthful, not falling in his promises, grateful, taking broad views (not pusillanimous), highly enthusiastic, not given to procrastination, powerful enough to control his feudatories, firm in mind, having a council of ministers of no mean calibre, desirous of self-discipline. These are called 'ābhigāmika-guṇas' which word occurs in the Palitana plates of Dharasena II (of Valabhi) in E.I. vol. XI p. 83 and in the Māliya plate of the same king (Gupta Ins. pp. 164, 169). The Daśakumāracarita VIII appears to make a pointed reference to this list when it makes a character say that the king (there referred to) has in him all the qualities beginning from good family (sarvavātma-sampad-abhijanāt-prabhṛti &c.) Then the intellectual qualities he should possess are: desire to learn, study, understanding of what is studied and retaining it, reflection, discussion and devotion to the principles accepted after discussion. Almost the same qualities of the intellect (*dhi*) are mentioned by Kām. IV. 22. The word 'sakyasāmanta' (in Kaut. VI. 1) occurs also in Agnipurāṇa 239. 4. The qualities that are the different aspects of his enthusiasm (or energy) are: valour, non-endurance (of the might of others), quickness (of action) and assiduity. The same occur in Kām. IV. 23. Then follows a long list of qualities that go to make up the personal endowment of the king (*ātma-sampat*). Gaut. (XI. 2, 4-6) requires that the king should do what is right (acc. to śāstras) and speak (or decide) rightly, should be pure (at heart and externally), should control his senses, be possessed of qualified servants and endowed with knowledge of the means of policy, should be even-handed towards all his subjects and look after their welfare. The long list of Śāṅkha-līkhita agrees more or less with those of Kautilya and Yāj. Śāntiparva 70 states that the king should possess 36 qualities, viz. he should not speak bitterly, he should be godly, not wicked, not haughty, of agreeable address &c. Kām. I 21-22 mentions 19 qualities that lead to the well-equipped personality of the king (*ātma-sampat*), viz. study of śāstra (Dandanīti), intellect, serenity, cleverness, boldness, power of comprehension, energy, eloquence, firmness, capacity to endure the worries of adversities, majesty, purity, kindness, liberality, truthfulness, gratefulness, noble family, character, self-restraint. Then Kām. in IV. 15-19 sets out the qualities called *ātma-sampat*, which

generally agree with Kauṭilya's enumeration (in VI.1). Acc. to Kām. IV. 24 liberality, truthfulness and valour are the three greatest qualities in a king, who, when endowed with these, acquires all other qualities. The Mānasollāsa (II. 1. 3-7) first enumerates 44 qualities such as truthfulness, spiritedness (which agree more or less with Kauṭilya's enumeration) and then states that the five most essential qualities in a king are truthfulness, valour, forbearance, liberality and capacity to appreciate the worth of others. The Agnipurāṇa (239. 2-5) enumerates 21 qualities such as noble family, character &c. In the Parasurāma-pratīpa 96 qualities are enumerated in the Rājavallabhakāṇḍa (Ms. 239 of Viśvāmaṇya collection II. folio 21b). The Sabhāparva 5. 107-109 and Rāmāyana II. 100. 65-67 require the king to avoid 14 faults viz. atheism, falsehood, hot temper, carelessness, procrastination, not seeing the wise, laziness, addiction to five pleasures of sense, considering state matters alone (without *mantrins*), taking counsel with those who do not know politics, not starting to do what is decided upon, not guarding secret royal policy, not practising auspicious acts, taking up undertakings on all sides at one and the same time. Vanaparva 251. 5 says that subjects do not like a king who is very timid, very weak, procrastinating, careless and immersed in pleasures on account of vices. Sabhā 5. 125 states that sleep (by day), laziness, timidity, hot temper, softness and dilatoriness are six calamities in a king.

The works on dharmasāstra and arthasāstra devote a good deal of space to the education of the king and to his moral discipline. Gaut. XI. 3 requires that the king should have received instruction in Trayī (the three Vedas) and Ānvikṣiki. This last has been differently interpreted by different writers. Kauṭ. I. 2 says that Ānvikṣiki comprehends Sāṅkhya,⁵⁷ Yoga and Lokā-

57. सर्वं योगं लोकायतं चैवान्वीक्षिकी । ... यदायते चैतासां वेतुभिरन्वीक्षमाणा लोकरूपोपकरोति न्यसनेषुदये च बुद्धिमत्समापयति प्रज्ञावाक्यक्रियाविशारदं च करोति । प्रदीपः सर्वविद्यानामुपायः सर्वकर्मणाम् । आख्यः सर्वधर्माणां शब्दवान्वीक्षिकी मता ॥ अर्थशास्त्र I. 2. This last verse occurs in वात्स्यायनभाष्य on न्यायसूत्र I. 1. 1, where the 4th pāda is विद्योद्देशं प्रकीर्तिता. Some read आन्वीक्षिकी (Jolly's ed. of अर्थशास्त्र) but आन्वीक्षिकी seems to be more grammatical and to be the reading of most classical works. The Trivandrum ed. reads अन्वीक्षिकी. Patañjali in his Mahābhāṣya has a sentence बर्हिषा मातुरी लोकायतस्य (Bhāgorī expounds the Lokāyata system), vol. III p. 323 on Tānini VII. 3. 45. Later on Lokāyata came to be identified with atheistic views that denied the existence of a soul or the next world. Śākhara on Vedāntasūtra II. 2. 1 and

yata and that it examines the relative strength of the three other *vidyās* with reasons, and thereby benefits the world, steadies the mind in calamities and prosperity and imparts excellence in intellect, speech and actions. It is always the torch of (sheds light on) all *vidyās*, it is the means of (inducing to go in for) all undertakings, it is the source of all dharmas. Kautilya derives the name from the root 'iks' with 'anu' and he takes it to mean the science of ratiocination. It is somewhat strange that Lokāyata is included in Ānvīkṣīkī, one of the subjects of study for the prince. But it appears from the remarks he makes that Kauṭ. uses it only in the sense of logic based on premises derived from ordinary experience (*loka*) though in later literature Lokāyata came to mean 'nāstika' (atheist, materialist). Acc.⁵⁸

(Continued from last page)

III. 3. 53 and 54 states that the Laukāyatikas held the view that consciousness is a quality of the body (and there is no soul over and above the body). The Tantravārtika runs them down as fools and apes (on Jaimini 1. 3. 3). In the Rāmāyaṇa Rāma asks Bharata not to resort to Lokāyatika brāhmaṇas, who, though childish, look upon themselves as learned and who relying on the knowledge acquired by Ānvīkṣīkī speak nonsense in spite of the fact that there are principal Dharmaśāstras (that point out the sensible path). कश्चिन्न लोकायनिकान् ब्राह्मणांस्तान् सेवसे । अनर्थकुशलां ह्येते बालाः पण्डितमामिनः ॥ धर्मशास्त्रेषु सुकृषेयु विद्यमानेषु दुर्बलाः । बुद्धिमान्नीतिकीं प्राप्य निरर्थं प्रवर्तन्ते ॥ अथोष्वाकाण्ड 100. 38-39. The Kāmasūtra (I. 2. 30) says that the Laukāyatikas hold that a *kāśāpāna* (copper coin) which one is certain of is better than a *niska* (a gold coin) which is doubtful. बरं सांशयिकं निश्चयादुत्तमं शयिकः कार्पापण इति लोकायनिकाः । कामसूत्र 1. 2. 30. Rājasekhara in his Kāvya-mīmāṃsā p. 37 (Gaekwad's O. series, ed. of 1934) refers to the opinion of the Laukāyatika logicians that the consciousness in human beings arises from the *bhūtas* (elements) just as the power of intoxication (in wine) is due to the mixture of several ingredients (none of which may by itself be intoxicating). The Nītivākyaṃpā p. 76 remarks "the Lokāyatika view leads to the effectuation of worldly affairs, for the king is able to uproot the thorns of the country by the help of Lokāyata". ऐहिकप्रवहारप्रसाधनपरं लोकायनिकम् । लोकायततो हि राजा राष्ट्रकण्डकात्तुच्छेदयति । नीतिवा. p. 76. Vide J. R. A. S. for 1917 p. 175 n. 2, article on लोकायत in J. A. O. S. 1930 p. 132 ff., H. Dh. vol. II p. 359 n.; 'Historical Notices of the Lokāyatas' in the Silver Jubilee vol. of the B. O. R. Institute, Poona pp. 386-397.

58. आन्वीक्षिकी समस्तसामुद्रिकनिकपणक्षमा हेतुविद्या । विष्णुसूत्र on वा. I. 306; आन्वीक्षिक्यां तर्कशास्त्रं वेदान्ताद्यं प्रतिष्ठितम् । छुक्रमीति. I. 153; आन्वीक्षिकी वेदाद्यविषयज्ञा आज्ञाज्ञानोपयोगिनी न्यायविद्या । राजनीतिप्रकाश P. 118. The word आन्वीक्षिकी is derived as आन्वीक्षा प्रयोजनं (कले) अस्याः इति आन्वीक्षिकी acc. to वायपिनि V. 1. 109. शरिरस्वामी on अमरकोश explains 'प्रत्यक्षममान्यामीक्षितस्य पश्चादीक्षणमन्वीक्षा सा प्रयोजनं प्रत्याः', while विष्णुनाथ on न्यायसूत्रभाष्य I. 1. 1 'अवगादतु पश्चात् ईका अन्वीक्षा उच्चयने तन्निर्वाहिका शेषमन्वीक्षिकी न्यायतर्कादिसव्येरापि व्यवहियते ।'. Vide नीलकण्ठ on शान्ति 319, 28 for a similar derivation.

to the *Amarakosa*, *Viśvarūpa* on *Yāj.* I. 306, *Haradatta* on *Gaut.* (XI. 3), *Aparārka* and several others *Ānvikṣiki* means 'Logic'. Acc. to *Kām.* II. 7 and 11, the *Mit.* on *Yāj.* I. 311, *Sukranīti* I. 158 it means '*Ātmavidyā*' (Metaphysics), while *Sukranīti* I. 153 and *Rājanīti-prakāśa* p. 118 combine the two by saying that it is logic that leads on to or is useful for acquiring knowledge of the Self. The *Nītimayūkha* (p. 34) includes logic and *Vedānta* in *Ānvikṣiki* and *Mīmāṃsā* and *smṛtis* under *Trayī*. The *Bārhaspatyasūtra* (II. 5-6) advises the king to follow the *Laukāyatika* doctrines at the time of securing *artha* (wealth) and the *Kāpālika-sāstra* in achieving his sexual and similar desires.⁵⁹

Great divergence of views prevailed as to the *vidyās* that were essential for the education of the king. According to the *Manusmṛti* VII. 43, *Śānti*. 59.33, *Kaut.* I. 2, *Yāj.* I. 311, *Kām.* II. 2, *Sukranīti* I. 152, *Agnī.* 238.8, the subjects for the king's education are four viz., *Ānvikṣiki*, *Trayī*, *Vārtā* and *Dandanīti*. *Kaut.* notes that the school of the *Mānavas* held the view that the *vidyās* were three and regarded *Ānvikṣiki* as a special branch of *Trayī*; that the *Bārhaspatya* school was of opinion that they were only two, *Vārtā* and *Dandanīti*, since *Trayī* only acted as a screen (to obscure the intellect) of one (the king) who wants to know the ways of the world; and the *Aśvanasas* regarded *Dandanīti* as the only *vidyā* for a king, since according to them, the efforts to learn all *vidyās* are tied down to it (i.e. are ultimately intended to lead on to the mastery of *Dandanīti*). It will be seen how the *Aśvanasas* and *Bārhaspatyas* had an entirely secular view in the science of government and divorced it from the study of sacred books and metaphysics in the case of the king. The *Daśakumāracarita* VIII (that displays a deep study of *Kauṭīlya*) says that the *vidyās* for the king are four (*caturō rājavidyāḥ-trayīvārtānvikṣikīdandanītiḥ*). The *Bārhaspatyasūtra* I. 3 (*Dandanītireva vidyā*) holds that *Dandanīti* is the only (essential) *vidyā* for the king. *Kauṭīlya* further explains that *dharma* and its opposite are learnt from the three *Vedas*, viz. *Sāmaveda*, *Rgveda* and *Yajurveda*, that the *Atharvaveda* and *Itihāsaveda* (i.e. *Itihāsa* and *Purāṇa*) are the other *Vedas* and that the six *Āṅgas* also (viz. phonetics, ritual, grammar, etymology, metrics and astronomy) are comprehend-

59. सर्वथा लोकापतिकमेव शास्त्रमर्थसाधनकाले । कापाटिकमेव कामसाधने ।
बाह्यस्पर्शवच्च II, 5-6.

ed in the word 'Trayī'⁶⁰. Śukraniti I. 155 says that the 14 vidyās (enumerated in Yaj. I. 3) are comprehended in Trayī. Gaut. XI. 19 expressly says that in doing his duty of making the people observe the rules of the sacred codes the king would have to rely on the Veda, Dharmaśāstras, the Āngas, Upavedas and Purāṇa. In the Rāmāyaṇa, Rāma and his brothers are often spoken of as proficient in the Vedas, Vedāṅgas, in Dhanurveda, Gāndhārvaveda, Rājavidyā &c. (I. 18. 24 and 26, II. 1. 20, II. 2. 34-35, V. 35. 13-14). In the Vanaparva 277. 4 it is said that the princes were proficient in the Vedas with their secret doctrine and in Dhanurveda. In the Ādīparva 221. 72-74 Abhimanyu is said to have learned from Arjuna before he became 16 the Dhanurveda in four sections, the knowledge of *astras*, and the theory and practice of these. Vide also Amuśāsana 104. 146-147. Kharavela in his Hathigumphā Inscription (E. I. vol. XX. p. 79 II. 2 and 5) states that he learnt Lekha (official correspondence), Rūpa (currency), Gaṇanā (Accountancy) and the administration of justice, when he was the crown prince and also Gāndhārvaveda (music). In the Junagadh Inscription of Rudradāman (E. I. vol. VIII at page 44) the Mahākṣatrapa is said to have attained great fame by his deep study, retention, and actual practice of grammar, artha (either lexicography or politics), music, logic and other vidyās and to have been a fine rider of horses, elephants, chariots and a great adept in wielding the sword and shield and in wrestling⁶¹. The personal attainments of Samudragupta (in Gupta Inscriptions No. 1 pp. 12, 15-16) show how thorough the education of at least some princes was or at least what the ideal about their education was. Vide H. Dh. vol. II p. 364 for the education of princes and Dr. Beni

60. धर्माधर्मो वचनाम् । अर्थाधर्मो वार्ताधाम् । नयानयो दण्डनीत्याम् । सामर्थ्य-
दुर्वेदाधर्मो । अथर्ववेदेतिहासवेदो च वेदाः । किला कल्पो व्याकरणं निबन्धे उन्वे ओल्लिख-
निति चाङ्गानि । अर्थाधाम् I. 2 and 3. In the Raghuvamś XVIII. 50 Kālidāsa speaks of only three princely vidyās and Mallinātha quotes the very words of कौटिल्य cited here and also Kām. II वचो वार्ता दण्डनीतिवित्तज्ञो विद्या मन्त्रमन्त्राः ।
वचना एव विभाषोर्वे येन सान्नीधिकी मता ॥ It should be noted that the Sāmaveda is here mentioned first. Probably Kanṣilya was a student of that Veda. In the Brāhmaṇas and Upaniṣads Ṛgveda comes first in the enumeration, Iu-
hāṇa and Purāṇa are called the fifth Veda in Chāndogya VII. 1. 2. Compare Agnipurāṇa 238, 9 for words similar to धर्माधर्मो वचनाम् etc.

61. सप्तव्यासार्थवर्षस्याध्यापानो विद्यानां महतीनां पारम्यधारणविज्ञानवधोमानविदुः-
कीर्तिना सुरमज्जरुच्यार्थानिबन्धितुद्राद्य (broken) बलतापवसोद्वर्कियेन &c.
E. I. vol. VIII p. 44 l. 12.

Prasad's 'Theory of Government in Ancient India' p. 218 for an ideal course of education for a prince quoted from the Buddhist work, *Sūtrāṅkārā* of Asvaghōṣa. The *Nītivākyaṃrta*⁶² adds a long list of the accomplishments which a prince should possess viz. all scripts, valuing of jewels, knowledge of arms &c. On reading the ideal courses prescribed for the education of the prince by ancient Indian writers one cannot help feeling that they were probably actuated by the same sentiments that are attributed to Socrates by Plato in his 'Republic' (tr. by Jowett, ed. of 1875, vol. III. p. 357) viz. 'Until philosophers are kings or the kings and princes of this world have the spirit and power of philosophy and political greatness and wisdom meet in one and these commoner natures who follow either to the exclusion of the other are compelled to stand aside, cities will never cease from ill-no, nor the human race as I believe-and then only will our State have a possibility of light and behold the light of day &c.' The *Agnipurāṇa* (225. 1-4) prescribes that the prince should be taught dharmaśāstra, kamaśāstra, arthaśāstra, science of archery (dhanurveda), the various arts and crafts by trusted teachers, that he should not be allowed to be associated with those who are angry with the king or disrespected by him or who are greedy and that if it is impossible to impart good qualities to him he should be confined, surrounded by pleasures. The princes were sometimes educated in their own capital or in a nearby college. Vide H. Dh. vol. II. p. 364. Sometimes, it appears, princes went to such famous seats of learning as Takṣaśilā (vide *Jātakas* ed. by Fausbøll II. 87, 278, 319, 323, 400, III. 158, 168, 415, 463). The subjects of study there were the three vedas and 18 śilpāni or vidyās (*Jātakas*, vol. II. 87, III. 115). Kautilya (I. 4) explains that Vārtā is constituted by agriculture, the rearing of cattle and trade; it benefits (the State) by bringing in grain, cattle, gold, baser metals, and free labour; by means of vārtā the king secures treasury and army whereby he brings under control his own side and the enemy. In the *Saṃhita*⁶³ 5. 79 and *Ayodhyakāṇḍa* 100. 47 it is declared

62. शिक्षाद्वारापक्रियामः राजपुत्रः सचांसु लिपिषु वसेत्सामे पदप्रमाणमपेक्षकमपि नीत्यामये रत्नपरीक्षायां संभोगप्रदरण्योपवासाविद्यासु च । नीतिवा. p. 161.

63. वार्तायां संभितस्त्रात लोकोपं दुःखमेवते ॥ सभा. 5. 79, अयोध्या 100. 47; पद्या-करवजिउपाभिः कृत्वा मोजाविषोषणैः । वार्तायां धार्यते सर्वे धर्मैरेतद्विजातिभिः ॥ वनपर्व 150. 30; बलाभूतो ह्ययं लोकखट्वा वै धार्यते सदा ॥ शान्ति 68. 35; नहि वर्तुषं लोको वार्तामुत्पन्नं केवलम् । शान्ति. 203. 3; वार्तासमुद्धौ सभाः समुद्धवो राजः । तस्य सङ्गं संसारमुत्तं वस्य कुर्विषेवः शाकावतः सगन्तुद्वारं च । नीतिवा. p. 93.

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that when the world relies on *vārtā* it easily prospers. The Śānti-parva (263.3) gives the warning that this world would cease to exist if *vārtā* was given up, that this world is rooted in *vārtā* and is sustained by the three vedas (68.35). The Vanaparva (150.30) states that the whole world is sustained by *vārtā* i.e. by merchandise, mines, trade, agriculture and tending cows, she-goats and ewes. The Nītivākyaṃṛta (p.93) after defining *vārtā* as above emphasizes that the king secures the abundance of everything when *vārtā* is prosperous and that the man who has his own agriculture, milch-cattle, plot for growing vegetables and a well in his own house has indeed all the pleasures of this world. These quotations indicate what importance was attached to agriculture and the economic structure of society. The result is that in the Arthasāstra economic matters occupy a very large space.

Kautilya (I.5) starts by saying that the three vidyās (except dandanīti) in the case of the prince depend upon danda, that danda in its turn is based upon discipline, which is of two kinds, natural and induced (or acquired). Vidyās produce discipline (of the 2nd kind) in him who possesses the qualities of intellect specified above. Then he goes on to say that the prince should learn the alphabet and arithmetic after his *anula* is performed (in the 3rd year or later) and after *upanayama* he should learn the three vedas and ānvikiṣki from the *śiṣṭas* (those learned in the veda), *vārtā* from the heads or superintendents (of the various departments thereof) and dandanīti from expounders (of the *vidyā*) and from practical politicians. Vide Manu VII 43 (=Matsya 215.54 and Agni 225.21-22) for directions as to from whom the prince was to learn the four vidyās. Kautilya prescribes that the prince should study these up to the 16th year, should then marry and that in order to foster the growth of the discipline of the intellect he should always associate with those who are advanced in the vidyās enumerated above (after his 16th year) and that the king should spend the first part of the day in practising the riding of elephants, horses, chariots and in the science of arms and the latter part of the day in listening to Itihāsa which comprises Purāṇa, history, stories, panegyrics, dharmasāstra and arthasāstra. A king whose intellect is thus disciplined and who is devoted to disciplining his subjects also and to doing good to all will be the sole ruler of the earth. The Nītivākyaṃṛta (p.162) defines *vinaya* as 'acting with humility towards those

who excel in *vratas*, *vidyās* and are aged.' Manu VII 38-39. Kām. I. 19-20 and 59-63, Śukra I. 92-93 (taken from Kām. I. 19-20) extol the value and importance of *vinaya* and waiting upon the aged and the learned. Manu (VII 40-42) states that many kings perished with their vast paraphernalia through want of discipline while others, though residing in a forest (i.e. without an army &c.), gained kingdoms through *vinaya*, and names Vena, Nahusa, Sudās son of Pijavana and Sumukha Nimi as those who perished through lack of *vinaya* and gives Prthu and Manu as examples of those who secured kingdoms through *vinaya*. Matsya 215.53 is the same as Manu VII 40. Ancient Indian writers harp on the education of the prince so much because their ideal of kingship was that the king should be a *rājarsi* (a royal sage). Kalidāsa frequently speaks of this e.g. in Śākuntalā II. 14 and Raghuvamśa (I. 58). They were aware, like Socrates, that until either philosophers became⁶⁴ kings or kings philosophers States will never succeed in remedying their short-comings (vide p. 50 above). Not only was an extensive course of intellectual training prescribed for the king, but both dharmaśāstra and arthaśāstra works strongly and frequently insist upon the necessity of moral discipline and the right direction of the emotions and will in the case of the king.

Kautilya (I. 6) emphasizes that control of the organs of sense is the cause of (proficiency in) *vidyās* and discipline should be attempted by giving up the six enigmical tendencies viz. lust, hot temper, greed, vanity (*māna*), haughtiness or insolence (*mada*), overjoy. He says that (the whole purpose or insistence of) all śāstras is the restraint of the senses, that even a supreme ruler of the whole earth up to its four borders whose senses are not under control will at once perish and cites two examples on each of these six tendencies, viz. Dāṇḍakya Bhoja who attempted to rape a brāhmana girl through lust and perished with his kingdom and kinsmen and Karāla king of Videha; Janamejaya (perished) who attacked brāhmanas through hot temper and Tālajangha who did so against the Bhṛguś; Aha who exacted through greed excessive taxes from persons of the four varṇas and Ajābindu, the king of Sauvira; Ravana who did not restore another's wife through his conceit and Duryodhana who did not give even a part from his kingdom; Dambhodbhava who despised all beings through his insolence and

⁶⁴. The word 'philosopher' used by Plato has not the narrow meaning of modern times.

Arjuna of the Haihaya dynasty; Vātāpi through overjoy when he attacked Agastya and also the oligarchy of the Vṛṣṇis when they attacked Dvaipāyana⁶⁵. These six evil tendencies are called *śatru-ṣaḍ-carga* or *ari-ṣaḍvarga*. Kautilya adds that by the conquest of these six evil tendencies Jāmadagnya (Parasurāma) and Ambarīsa enjoyed the earth for a long time. Kām. I. 55-58) and Śukra. I. 144-146 give six of the twelve examples of Kaut. and Kām. I. 58 is the same as the last verse of Kautilya I. 6. Vide Mārkaṇḍeya 27. 12-13. In the Vāṇavadattā of Subandhu (Hall's ed. pp. 273-276) there is a long list of the kings of antiquity (Pururavas, Nahusa, Yayāti, Sudyumna, Nala and nine others) who suffered owing to some failing or other in themselves. The Udyogaparva (74. 13-18) mentions by name 18 kings who by their evil career destroyed themselves, their friends and relatives (such as Mudāvarta of the Haihayas, Janamejaya of the Nipas, Bahula of Tālajaṅghas, Dhautamūlaka of the Cinas). This shows that Cina does not probably stand for modern China in the epic. Manu VII. 44 (= Matsya 215. 55) also emphasizes the necessity for the king incessantly to curb the senses and not to fall a prey to vices arising from *kāma* and *krodha*. Manu (VII. 45-48) enumerates ten vicious tendencies due to *kāma* (desire for pleasures) viz. hunting, gambling, sleep by day, finding fault (with others), women, drunkenness, (excessive indulgence in) dancing, singing and instrumental music, and aimless wandering; and eight vicious tendencies due to *krodha* (hot temper) viz. tale-bearing, violence, treachery, envy, slander, (improper) seizure of property, reviling and assault. Manu further declares (VII. 50) that among the vices due to *kāma*, drinking wine, gambling, women and hunting are the most harmful, each preceding one being worse than each succeeding

65. Most of these stories occur in the Mahābhārata, Purāṇas, and Buddhist works. Vide Jolly's ed. of the Kautilya vol. II. p. 3. But the story of the Vṛṣṇis and Dvaipāyana is not known. For Janamejaya (different from the descendant of Arjuna, the Pāṇḍava) incurring the sin of brāhmaṇa-killing, vide Śānti 150. 1. For Arjuna (called Kārtavīrya) king of Haihayas, vide Sabhāparva 22. 24, Vanaparva 115. 12, Anuśāsana 153. 3 ff, Śānti 49. 35 ff, and Āśvamedhikaparva 29, Matsyapurāṇa 43, Vāyu 94. For Agastya and Vātāpi vide Vanaparva 96. In the Mārkaṇḍeya the instances of kings that came to grief through *kāma*, *krodha*, *lobha* &c. are different except that of Alla (chap. 27. 14-17). For Dambodbhava vide Sabhā 22. 24 and Udyoga 96. 7 (cr. ed. 94. 7). For the story of Danda who raped a maiden of the Bhṛgu family vide Rāmāyaṇa VII. 80-81. Dāṇḍakya Bhoja is mentioned (along with Rāvaṇa and Kicaka) by the Kāmasūtra I. 2. 44-45.

one and (VII. 52) that among the vices due to hot temper, causing physical injury, reviling and deprivation of wealth are the worst. Manu (VII. 52) has a sly hit that these seven vices are more or less prevalent among kings (*sarvatraivānuṣaṅgīnah*) and therefore the only choice is that of the lesser or least of evils. Kautilya (VIII. 3) has a lengthy disquisition on the views of his predecessors about the relative harmfulness of the three vices due to hot temper and of the four due to *kāma* and states his own opinion that *arthadūṣaṇa* meaning loss of the means of livelihood by gifts, exactions (by the king), loss or abandonment of property is more harmful than reviling and *dandapārūṣya* is more harmful than *arthadūṣaṇa*. He points out the benefits derived from hunting viz. exercise, the disappearance of phlegm, bile, fat and sweat, the acquisition of skill in aiming at stationary and moving bodies, the ascertainment of the minds of beasts when they are provoked and occasional travel.⁶⁶ These are echoed, almost in the same words by Kām. XIV. 25 and in the *Śakuntala* (II. 25) by Kalidāsa. Vide *Saṁhā* 68. 20, *Udyoga* 33. 92 for the seven principal vices. Kām. (XIV. 6 and 7) enumerates the three vices of hot temper and the four of *kāma* and holds an elaborate discussion on their respective demerits. He defines *arthadūṣaṇa* (XIV. 17) somewhat differently (viz. as the abandoning of an important object or of great wealth in order to show that what really merits blame is not so). Vide the *Viṣṇudharmot-tara* II. 65. 12-15 for the two meanings of *arthadūṣaṇa*⁶⁷. Kām. does not agree that hunting has many good points in its favour and advises the king to prepare a separate well-guarded hunting ground of one-half *yojana* in length and breadth if he really desires to hunt (XIV. 28-42). The *Mānasollāsa* (vol. II) in the 15th chapter of the 4th *viṃśati* deals with hunting as a sport for kings and points out how a forest is to be preserved for royal hunting and how it is to be guarded and enumerates 31 methods of hunting. Kām. warns the king who wants to retain

66. सुमयायां तु व्यायामः श्रेयस्यमित्येवमेवेदमज्ञातस्थले स्थिते च काये लक्षणविशेषः कोपप्रधाने हि तेषु च सुमयायां चित्तज्ञानमन्यमानं चेति । कौटिल्य VIII. 3: जितभयत्वं व्यायाम आत्मैककृतयः । अस्त्रियरेषु लक्ष्येषु वागमिद्विद्वत्सुतमा ॥ सुमयायां सुयाने-
तानाहुरग्नये न तत्त्वज्ञानम् । दोषाः वागहराः यापस्तस्मात्तद्व्यसनं महत् ॥ काम. XIV. 25-26. The reading कोपप्रधाने in some Mss. of the Kautilya is preferable in view of Kalidāsa's words 'चित्तं भयकोपयोः'

67. Vide the *Viṣṇudharmot-tara* (II. 65. 12-15) 'अर्थस्य दूषणं राम द्विविधं विवर्जयेत् ॥ अर्थानां दूषणं चैकं तथा चार्थेन दूषणम् । वाकाराणां समुच्छेदो दुर्गादीनां समकृपा ॥ अर्थानां दूषणं भोक्तृविपकीर्णत्वमेव च । अर्थकाले यद्वाचस्पत्ये वानमेव च ॥ अर्थसु दूषणं योक्तृनसत्कर्मवर्तनम् ।'

his kingdom against fondness for women (XIV. 57-58). He further says that a king may even indulge in fondness for women and may even drink moderately, but he must totally avoid gambling and hunting (XIV. 65). Kautilya regards gambling as the worst of the vices for a king (VIII. 3 last sentence in prose). In the *Dasakumāracarita* (VIII) there is an elaborate (but ironical) description of the mental and other benefits derived from the four principal vices due to *kāma*. *Kām.* I. 54 states that hunting, gambling and wine in the case of kings must be condemned, since calamities befell Pāṇḍu, Nala and the Vṛṣṇis (respectively) by being addicted to these. Even an ideal king like Rāma was fond of hunting. Śukra (I. 332-333) points out that hunting has much in its favour, but there is one great defect in it viz. slaughter of animals. Śukra (I. 109-119) denounces gambling, drinking and fondness for women as the worst of vices and points out that Indra, Daṇḍakya, Nahusa and Rāvana came to grief through their passion for women (I. 114) and that a king who is excessively fond of dancers, singers, courtesans, wrestlers, eunuchs and men of low birth falls an easy prey to his enemies (I. 128). *Kām.* (I. 40-46, which are almost the same as Śukra I. 102-107) gives a poetic description of how animals like the deer, the elephant, the moth, the fish and the bee meet death or become confined by extreme attachment to one only out of the five objects of sense and emphasizes that man who can and does enjoy all the pleasures of the five senses must practise great restraint.

CHAPTER III

DUTIES AND RESPONSIBILITIES OF THE RULER.

All works are agreed that the first and foremost duty of the king is the protection of subjects. Śāntiparva (68. 1-4) notes that all the seven expounders of polity (rājasastraprane-tārah) named by it extol protection as the highest *dharma* of the king. Manu VII. 144 states that the protection of subjects is the highest *dharma* and Kalidāsa in Raghuvamśa 14.67 alludes to this dictum of Manu. Protection consists in punishing internal aggression (such as by thieves and robbers and by persons who invade a man's rights) and in meeting external⁶⁸ aggression. Vide quotation from Bṛhaspati below. Gautama (X. 7-8) prescribes that the special responsibility of the king is to protect all beings, to award just punishment and that he has to protect the several varṇas and āśramas according to the rules of śāstra and to bring them round to the path of their proper duties when they swerve from it (XI. 9-10). Vasiṣṭha (19. 1-2) states that the wise say that protection is a life-long *sūtra* in which he has to give up fear and softness of heart. Vas. 19. 7-8 and Viṣṇu Dh. S. III. 2-3 are similar to Gaut. XI. 9-10. The Śāntiparva (23.15) repeats a *gāthā* of Bṛhaspati 'As a snake swallows mice lying in holes, so the earth swallows these two viz. a king who does not fight (an invader) and a brāhmaṇa who does not go on a journey (for acquiring knowledge from famous teachers)^{68a}. Manu IX. 306 states that the king protecting his subjects according to the śāstra and meting out punishment to those who deserve it performs every day sacrifices in which the fees are one hundred thousand cows (i.e. he secures the spiritual reward of very solemn sacrifices). Yaj. I. 335 is to the same effect. Kautilya also lays emphasis on the duty to keep the varṇas and āśramas to their duties 'Therefore the

68. बृहस्पतिः । इत्यजापालने मोक्षे विविधं न्यायनोद्धिभिः । परचक्राच्चौरभयादुवर्त्ते-
प्रोन्नादवर्त्तिनः । परामीकस्तेनभयमुपायैः शमयेन्नुपः । बलवापरिभूतानो मत्पहं न्याययुर्ज्ञेः ॥
quoted by राजनीतिः, pp. 254-255.

68a. सुनिरेतो निगिरति सर्वो विलशवानिव । राजानं चाविरोद्धारं ब्राह्मणं चापवा-
नितम् ॥ शान्ति 23. 15. This is attributed to Uśanas in Śānti 57. 3 (but
the words are द्वाविमो वसते सुनिः सर्वो &c.). Vide also Sabha 55. 14. The same
verse is शुक्लीतिसार IV. 7. 303.

king should not allow the people to swerve from their duties. He, who keeps dharma intact (without breach), enjoys bliss in this world and the next'. Nārada⁶⁹ (prakīrṇaka 33) states 'His duty is to protect the subjects, to (honour or) listen to the aged and the wise, to look into the disputes of people and to be energetic in his functions as king'. Śukra (I. 14) says that the highest dharma of the king is to protect the subjects and to put down the wicked. According to Atri (verse 28),⁷⁰ to punish the wicked, to honour the good, to increase the treasury in the right way, to deal impartially with litigants and to protect the kingdom—these five are declared to be sacrifices in the case of kings. The Viṣṇudharmottara (III. 323, 25-26) refers to the five sacrifices in very similar words. In Śānti 77, 33 the king's duty to restrain brāhmanas from engaging in unworthy actions is specially emphasized. These passages establish that the principal duties of the king were conceived to be to protect the subjects, to see that the rules of varṇas and āśramas were carried out by them, to punish the wicked and to do justice.

The duty to protect involved fighting and probable death. Therefore the ancient works on dharma-śāstra always insist that it is the duty of the ksatriya to fight and that death on the battlefield is to be his highest ideal. Manu (VII. 87-89) enjoins upon the king, when protecting his subjects against invasion, not to run away from battle and promises heaven as the reward for kings who die fighting in battle. Yāj. I. 324 holds forth the same reward for all soldiers who are killed in battle. Vide Striparva 2.16 and 18 and II. 8-9. The Bhagavadgītā (II. 31-37) most solemnly declares that there is nothing higher for a ksatriya than a righteous war, that a ksatriya's duty requires him not to quail in battle, that if he dies in battle he goes to heaven and if he survives he rules over the world, that he should fight as a duty without caring for gain or loss, victory or defeat and if he fights with this attitude no sin attaches to him. Śānti-parva 78. 31 states that just as those who join in the bath of the king at the end of the Āsvamedha are purified of all sins, so all

69. तस्य धर्मः प्रजास्थां वृद्धवाङ्मौलसेवकम् । दुर्लभं स्ववहाराणस्तुल्यम् च स्वधर्मम् ॥ वायु (प्रकीर्णक 33) ; धृष्टस्य वरमो धर्मः प्रजानां परिपालनम् । ब्रह्मनिग्रहणं नित्यं च नीत्या मे विना क्षुभे ॥ शुकः I. 14.

70. बुद्धस्य दुष्टः क्षत्रस्य वृद्धा न्यायेन कोतस्य च संयुद्धिः । अगलपातोऽग्नीषु राष्ट्र-रक्षा पक्षेयं यज्ञाः कथिता सुपाणान् ॥ अत्रि verse 28; compare बुद्धदण्डः सतां वृद्धा पश्येत् च धर्मात्मनः । राष्ट्ररक्षा सनातं च यथहोत्रेषु पञ्चकम् ॥ सुमित्राणां महायज्ञाः सर्वाकलमप्य-वाहनाः । विष्णुधर्मोत्तर III. 323, 25-26.

soldiers (of whatever caste and on whatever side) killed in battle become pure by the destruction of their sins. Manu (VII 94-95) sets out the results for a soldier when he flees from the battlefield. Parāśara⁷¹ III 37 says "Two men pierce the orb of the sun (i.e. reach heavenly worlds) viz. an ascetic endowed with Yoga and a soldier killed while facing the enemy" and the following verses (III 38 ff) dilate upon how the slain warrior is waited upon in heaven by divine damsels. A verse of the Rgveda X. 154.3 (= Atharva 18.2.17) appears to hold that warriors losing life in battle reap the same rewards that those who make gifts of a thousand cows in sacrifices secure.⁷² It is probably this passage which Kautilya has in mind when in X 3 he refers to the Veda for inciting the soldiers to fight without regard to life. Ap. Dh. 8. (II 10. 26. 2-3) states that a king, who strives to recover the wealth of brāhmanas (stolen by thieves) and dies in the effort, is said to perform a sacrifice, in which his body is the sacrificial post and the foes are incalculable and that other valiant men losing life in fighting for a (good) cause are in a similar position. To die fighting for the protection of cows and brāhmanas is specially commended (vide Śānti 21. 19 and 77. 28 and 30). The Viṣṇudharmasūtra III. 44-46 prescribes 'there is no duty for kings equal to losing one's life in battle; those who meet death in protecting a cow, a brāhmaṇa, a king, a friend, their own wealth and their wife enter heaven as also those who meet death in preventing confusion of varnas (caused by adultery &c.).' On the eve of battle the great warrior Bhīṣma says to his officers: 'It is a sinful act for a ksatriya to die in his house from some disease; the ancient code of conduct for him is that he should meet death from steel' (Bhīṣmaparva 17. 11). The same idea is presented in Śalyaparva 5. 32, Śānti 97. 23 and 25.

Kaṇva⁷³ (V. 82-83) makes it clear that the subjects require protection against the king's officers, thieves, enemies of the king, royal favourites (like the queen and the princes) and

71. इतिमौ युष्मौ लोके सर्वमण्डलमेदिनी । परिवाहनेमनुकथ्य रणे जमिमुचे हतः ॥
Parāśara III. 37, quoted by मेधातिथि on मनु VII. 89. The same is उद्योगपरं 33. 61 which reads युष्मद्वयम् in the first *pāda*.

72. वे युष्मन्ते पथनेषु शूरानो ये तन्वृषजः । ये वा सहस्रदक्षिणास्तौधिदेवावि
मण्डवात् ॥ अ. X. 154. 3 = अथर्व 18. 2. 17. This also is quoted by मेधा. on मनु
VII. 89. अथर्वशास्त्र (X. 3) has 'वेदेवपथसुपते - समासदक्षिणानां पञ्चानामवधयेषु
सा ते मतिर्वा शूरानामिति ॥'

73. आनुकरोम्यधोरेभ्यः परेभ्यो राजपुत्रेभ्यः । इभिर्विपत्तिभिश्च प्रजानां पञ्चधा
भयम् ॥ पञ्चमकारमन्नेतदपीहं सुपतेर्भवम् । कामन्दक V. 82-83.

the greed of the king himself. As an extension of the king's duty to protect, the works lay down that it is his duty to support students, learned brāhmanas, and sacrificers.⁷⁴ Vide Gaut. X. 9-12, XVIII. 31, Kaut. II. 1, Annāsana 61. 28-30, Śanti 165. 6-7, Visnudharmasūtra III. 79-80, Manu VII. 82 and 134, Yaj. I. 315 and 323 and III. 44, Matsya 215. 58, Atri 24. The Hindu kings of ancient and medieval India followed this advice with great liberality for centuries and the subject has already been treated in vol. II pp. 113, 856-864. The functions of Government were not supposed to end with the maintenance of peace and order, but Government must be an instrument of the diffusion of culture. The king is also called upon to support helpless and aged people, the blind, the cripple, lunatics, widows, orphans, those suffering from diseases and calamities, pregnant women by giving them medicines, lodging, food and clothing according to their requirements.⁷⁵ Vide Vas. 19. 35-36, Visnudharmasūtra III. 65, Matsya 215. 62, Agni 225. 25, Ādiparva 49. 11, Sabha 18. 24, Virataparva 18. 24, Śanti 77. 18. The Rājantī-prakāśa (pp. 130-131) quotes⁷⁶ the Visnudharmottara requiring the king to honour and protect chaste women (pativrātās) and Śaṅkha-Likhita to the effect that even ksatriyas and vaiśyas who cannot maintain themselves by the methods prescribed by the śāstras for them should approach the king who should help them with the means of livelihood and they should work for the king in the manner laid down for them and that śūdras also should apply their skill and crafts for the benefit of the king when so maintained.⁷⁷ Medhatithi on Manu V. 94 states that when a king supports his subjects in a famine by distributing food from his treasury no question of his being in mourning would come in the way. These provisions for the old, the blind, the widows, orphans and helpless persons and for the relief of unemployed ksatriyas, vaiśyas and śūdras strike one as

74. क्षत्रियमाचार्यपुरोहितश्रोत्रियेष्वपि बहुद्वयान्पण्डितकराणामिष्टवृद्धादयः कानि यव-
च्छेत् । ... वाद्वृद्धाधित्वसम्पन्नाथोऽथ राजा विभूयात् । शिवमयजाता यजातायाश्च
पुत्रान् । कौटिल्य II. 4.

75. कृपणानाथदृष्टानां विधवाणां च पोषिताम् । योषणेन च दूतं च निरयमेव यव-
च्छेपेत् ॥ शान्ति 80. 24 (= मत्स्य 215. 62 = अग्निपुराण 225. 25 with slight varia-
tions) : कृपणानुराणाधपण्डितविधवालुङ्गदानीयपायसपात्रनाच्छादनेविभूयात् । शङ्ख-
लिखितौ quoted in राजनीतिम्, p. 138; कच्छिन्दन्धोऽथ सुकांश्च पण्डून् स्पृष्टानवाग्धवान् ।
पितेन पासि धर्मज्ञं तथा यज्ञजितानपि ॥ सभा 5. 124.

76. सार्धर्षीनां पाठने कुप्याद्भुजने च महर्षयः । एकयल्पः शिवः सर्वं धारयन्ति
जगत्त्रयम् ॥ राजनीतिम्, p. 130.

77. राजन्यपैदवाग्यजोयन्तौ राजानमुपलिटेषातां तावुभौ शक्तिः संविमतावुपकुपातां
स्वस्वधनानुष्ठानेन शिलानः कारयन्तु त्वा ॥ शङ्खलिखितौ quoted in राजनीतिम्, p. 141.

rather modern in tone. In many modern countries the State has become the means of providing services for the greater part of its subjects, not only armed forces and the police, but social services such as education, public health, medical attendance, insurance against unemployment, old age, widowhood, and orphanage, relief of poverty &c. In ancient India, though there were naturally no Acts of Parliament guaranteeing the above services to the subjects, public opinion, the views of eminent writers and the practice of the best kings created an atmosphere in which it was thought that it was imperative for the king representing the State and its resources to encourage learning, to care for the blind, the decrepit, the old and the widowed and to give employment to those who were unemployed. Aśoka constructed hospitals for men and animals (2nd Rock Edict at Kalsi in C. I. I. vol. 1, p. 28), alms-houses, rest houses, watering places, shady trees on the highways and irrigation works, visited and supported the aged (8th Girnar Rock Edict in C. I. I. p. 15). In the 2nd century B.C. Khāravela, emperor of Kalinga, declares in his Hathigumpha Inscription (E. I. vol. XX p. 71 at p. 86) that in the very first year of his reign he constructed embankments round the Khibira lake in the Kalinga capital and renovated all public gardens. Rudradāman in the 2nd century A. D. repaired the Sudarśana lake at great cost from his own treasury without levying fresh taxes or benevolences (*pranaya*) or forced labour. The Anuśāsanaparva says that good kings should²⁸ construct meeting halls, *prapās*, tanks, temples and lodging places for brāhmanas. The Matsyapurāṇa 215. 64 remarks that the king should give to those who stay in hermitages food, oil and pots. Vide Āp. Dh. 8. II. 2. 4. 21 and Haradatta thereon as to provision for śūdra guests. It is quite possible that these rules of the texts were not literally followed by all kings, but it is well-known how even legislative enactments are carried out by the subordinate staff in all countries including those of the West. One has only to turn to Dickens' 'Oliver Twist' for some indication of the administration of Poor Laws and work-houses in England about a hundred years ago.

As regards the king's daily routine Kauṭ. I. 19, Manu VII. 145-147, 216-226, Yāj. I. 327-333, Sukraniti I. 276-285, Agnipurāṇa 235, Viṣṇudharmottara II. 151, Bhāgavata X. 70.4-17, Nītiprakāśikā VIII. 9 ff., Rajanītiprakāśa pp. 153-169 and other works lay down

²⁸ आश्रमपाठशालानि वृत्तायतनानि च । बाह्यणवसथाश्चैव कर्तव्यं नृपसत्तमैः ॥
अनुशासनपर्व quoted in परा. nar. I. part. 1. p. 466.

detailed rules, which have been already set out (H. of Dh. vol. II pp. 805-806). Every day on rising from his bed the king was advised (by Manu VII. 37) to wait upon brāhmanas learned in the three Vedas and endowed with wisdom and to abide by their directions. Vaa. I. 39-41, Gaut. XI. 13-14 say the same. In giving this advice exaggerated claims were made for brāhmanas which have been already set out before. Vide H. Dh. vol. II pp. 135-136 and Anuśāsana 33, 2-8. The king was also expected to show himself to all people every day (Ayodhya 100. 51, Sabha 5. 90)⁷⁹.

An extremely high ideal was placed before the king by the Kautilya, the Mahābhārata and other works. In the Arthashastra I. 19 Kautilya⁸⁰ proclaims the magnificent ideal 'in the happiness of the subjects lies the happiness of the king, in their welfare lies his welfare; the good of the king does not consist in what is pleasing to himself, but what is pleasing to the subjects constitutes his good'. Similar words occur in the Viṣṇudharmasūtra III. last verse.⁸¹ The Mahābhārata (Śānti 69. 72-73) purports to quote two verses of Aṅgiras (i.e. Bṛhaspati), one of which says 'of what use is *tapas* to that king or of what use are even sacrifices to him who has well looked after his subjects? He is surely one who knows all dharmas.' Kautilya compares the king to the performer of a sacrifice, in which his *vrata*⁸² (in the case of the sacrificer observances about food, scratching the body &c.) consists in being ever active, the sacrifice consists in issuing orders for carrying out the business (of the State), the sacrificial fee (that the king pays) is his

79. कश्चिद्दर्शयते निर्ये मनुष्यान्ममलोकतः । सभापर्व 5. 90.

80. राज्ञो हि व्रतमुत्थानं यज्ञः कार्यानुज्ञासनम् । वृक्षिणा वृत्तिसाम्यं च वृक्षितरवा-
निर्येचनम् ॥ यज्ञासुखे सुखे राज्ञः यज्ञानां च हिते हितम् । नास्तिपिरे हितं राज्ञः यज्ञानां तु
निर्ये हितम् ॥ अर्थशास्त्र I. 19.

81. यज्ञासुखे सुखं राजा तद्वदुःखे पथ दुःखितः । स कीर्तिपुत्रो लोकेश्वर येन
स्वयं महीपते ॥ विष्णुधर्मसूत्र III. last verse quoted in राजधर्मकाण्ड p. 15;
कुत्वा सर्वाणि कार्याणि सम्पद् संपाद्य मेदिनीम् । पालयित्वा तथा योयान् परत्र सुखमेधते ॥
किं तदयं तपसा राज्ञः किं च तस्याध्वरीराय । सुपालितमजो यः स्वात्मसर्वधर्मविदेव सः ॥
शान्ति. 69. 72-73. These words remind one of the famous proclamation of
Queen Victoria in 1857 (called an impossible charter by a notably energetic
but retrograde Viceroy) which breathes the same high and noble sentiments
'in their prosperity will be our strength, in their contentment our security
and in their gratitude our best reward'.

82. Vide Āp. Sr. X. 13-15, Baud. Sr. VI. 6 for long lists of observances
(*vratas*) some of which are set out in H. Dh. vol. II. pp. 1139-1140 and
ibid. p. 1135 for the bath of the sacrificer.

impartiality to all (lit. behaving in the same way to all), and his coronation corresponds to the bath of the person who is consecrated for a sacrifice. Śāntiparva⁸² (56, 44 and 46) and Nitiprakāśika VIII. 2 declare that a king like a pregnant woman should not do what is pleasing to him, but what would conduce to the good of the people and the ancient dharma (for a king is to keep the subjects contented. In Śānti 90, 1 and 5 it is said 'the king is there for the upholding of dharma and not for acting as he likes and that all beings have to depend on dharma which in its turn depends on the king'. In Udyogaparva 118, 13-14 a king exclaims 'the wealth I possess is for the benefit of the urban and rural population and not for my own enjoyment; for, that king who at his sweet will gives away what (really is not his but) belongs to others does not become endowed with spiritual merit nor with fame'. King Marutta is warned by his grand-mother in the Mārkaṇḍeya⁸³ (130, 33-34) that the king's body is not meant for pleasures but for undergoing great trouble in protecting the earth and carrying out his duties. Ancient writers loved to dwell upon the rule of the king as paternal. Kaṭ. II. 1 states that the king should favour like a father those who are outside the rules for remission of taxes. Yaj. 1. 334 requires the king to be like a father to his subjects and servants. Vide Śānti 139, 104-105 for the same idea.⁸⁴ In the Rāmāyaṇa II. 2, 28-47 and V. 35, 9-14 the virtues of the prince Rāma are set out in great detail, where it is said that Rāma behaved like a father (II. 2, 39), that he sympathized with the people in their sorrows and was pleased like a father when the subjects celebrated festivals. The Rāmāyaṇa⁸⁵ III. 6, 11 declares that it would be a great *adharma* on the part of that king who takes a

82. लोकरक्षणमेवात्र राज्ञो धर्मः समातनः । शान्ति. 57, 11: यथा हि गर्भिणी हित्वा स्वं विषं ममसोऽनुमत् । गर्भस्य हितमाधत्ते तथा राज्ञाप्यसंशयम् ॥ वसिष्ठश्च कुक्ष्येऽहं सदा धर्मोऽनुवर्तिता । स्वं विषं तु परित्यज्य यद्यलोकहितं भवेत् ॥ शान्ति. 56, 45-46; the first is नीतिप्रकाशिका VIII. 2 which reads the last pāda तथा कुक्ष्येऽहं राज्ञस्य धर्मोऽनुवर्तिता । ... धर्मं तिष्ठन्ति पूतानि धर्मो राजानि तिष्ठति ॥ शान्ति. 90, 1 and 5. पीरजानपदार्थं तु ममार्थं नास्मभ्येत ॥ कामता हि धने राज्ञा यः पारिवर्षं ययच्छति । न स धर्मेण धर्मोऽनुवर्तते यशसा न च ॥ उद्योग 118, 13-14.

83. राज्ञो अरिघटणं न भोगाय महीपते । क्रिशाय महते दृष्टीत्यधर्मोऽस्मिन्नस्ते ॥ मार्कण्डेय 130, 33-34.

84. पिता भ्राता कुक्षः शारदा वल्लिर्भवयी धनः । सप्त राज्ञी सुशान्तेताम्रमुराह वीजा-
धरिः । पिता हि राजा लोकरक्षं यजानो योऽनुकम्पितः । शान्ति 139, 104-105.

85. अधर्मः सुमहाबाधः भवेत्तस्य महीपतेः । यो हरेत् पतिपद्विभानं न च रक्षति
पुत्रवत् ॥ अरण्यकाण्ड 6, 11.

sixth part of the produce (of fields) and does not protect his subjects as if they were his children. These sentiments are echoed by classical poets like Kalidāsa in the *Śakuntalā* V. 5 and VI. 23 and the *Raghuvamśa* (I. 24). In the *Harṣacarita* (V) the dying king Prabhākaravardhana consoles his young and favourite son Harsa by exhorting him to reflect over the idea that kings are to be deemed to have relatives in their subjects and not merely in agnates.^{86a} Asoka also in his Edicts harps on the paternal relation 'all men are my children' (the first separate Jaugadh Edict, C. I. I. vol I pp. 111 and 114).

There were, it appears, several grades of rulers from the most ancient times. The word *rājan* occurs in numerous places in the *Rgveda*. It is applied to such gods as Mitra and Varuṇa (*Rg.* VII. 64. 2), Varuṇa (*Rg.* I. 24. 12 and 13, X. 173. 5). It appears to be used in two senses, viz. (1) 'king' as in *Rg.* I. 65. 7, III. 43. 5 ('will you make me the protector of people, the king, O Indra'), IV. 4. 1, IX. 7. 5, X. 174. 4) and (2) 'noble' as in *Rg.* IX. 10. 3, X. 78. 1, X. 97. 6 ('where the plants come together as nobles in an assembly' *rājāṇaḥ samitāyāṃ*). In *Rg.* VIII. 21. 18 it is said⁸⁷ 'Oitra who gave thousands and ten thousands is the only king, others are only small chiefs along the bank of the Sarasvatī'. The word 'samrāj' is known to the *Rgveda* and is used as an epithet of Varuṇa (in *Rg.* VI. 68. 9) and of Indra (in *Rg.* VIII. 16. 1) and the word *samrājya* also occurs in relation to Varuṇa in *Rg.* I. 25. 10. In *Rg.* VIII. 37. 3 Indra is said to be sole ruler of the world (*ekarāt*). It is not unlikely therefore that the idea of an emperor who had suzerainty over several kings was known, though it is possible that in *Rg.* VIII. 37. 3 the word is used only in a metaphorical sense. In *Rg.* VII. 83. 7-8^{87a} it is said that ten kings though they formed a confederacy could not vanquish king Sudās and that in the ten kings' battle (*daśakurūjāḥ*) Indra and Varuṇa helped Sudās who was surrounded by them on all sides. A very large number of kings is mentioned by name in numerous places in the *Rgveda* (e. g. I. 53. 8 and 10, I. 54. 6, I. 100. 17, VII. 33. 2, VIII. 3. 12, VIII. 4. 2). Besides these it appears that there were

86a. यज्ञाभित्तु यन्मुमन्तो राजानो न ज्ञातिभिः । हर्षचरित V.

87. चित्र इन्द्राया राजका इदं न्येके पके सरस्वतीमसु । पर्जन्य इव ततनद्धि इत्यथा सदसममुता ददत् ॥ अ. VIII. 21. 18.

87a. दश राजानः समिता अपजयन्तः सुदासमिन्द्रावरुणा न युधुषुः । ... दाशराज्ञे परिपसाप विश्वतः सुदास इन्द्रावरुणापरिषत्तम् । अ. VII. 83. 7-8.

tribal chiefs or governments of such clans or tribes as the Anus, Druhyus, Turvaśas, Pūrus, Yadus (Rg. I. 108. 8, all in the plural, VII. 18. 6 and VIII. 6. 46). But sometimes these words are used in the singular, when they mean 'a king or chief of that clan'. Vide Rg. VIII. 4. 7, VIII. 10. 5, IV. 30. 17. In the Atharvaveda III. 4. 1 (may you shine forth as the sole ruler of men) that word (*ekarāt*) is used in its literal sense and in Atharva VI. 98. 1 (may^{87b} Indra conquer and may he never be defeated, may he shine as the overlord among kings) the idea of an emperor (*adhiraāja*) is clearly set forth. In Rg. X. 128. 9⁸⁸ the word 'adhi-rāja' must be taken in the same sense. The Atharvaveda speaks of an Ugra which word seems to mean a formidable king (or emperor) 'Then you chase away disease as a formidable (king) who is in the midst (of many kings presses hard each of them)' IV. 9. 4. In the Atharvaveda III. 4. 3 it is said 'May the *ugra* see a lot of tribute'. In Rg. X. 34. 8 the word *ugra* has probably the same sense viz. 'a formidable king'. In the Tai. S. II. 6. 2. 2 it is said that men are held (supported or restrained) by the king (*tasmād rājāś manusya vidhṛtāḥ*). In the Tai. S. I. 8. 10. 2 occur⁸⁹ the words in the *āind* formula recited in the Rājasaṁyaya 'May the gods extract for men great power, great overlordship, great sovereignty over people; this, O Bharatas, is your king, while Soma is king of us brāhmaṇas'. The exact relation of the two words 'ādhipatya' and 'jānarāja' is not clear. Similar words occur in Vāj. S. IX. 40 and X. 18 and in Kathaka XV. 5. In the Ait. Br. (39.1) it is said⁹⁰ that 'whoever desires the king to attain supremacy over all kings, to attain to the rank of emperor...and desires that he be the supreme ruler, the sole emperor (*ekarāt*) of the whole earth bounded by the sea up to its very extremities should be consecrated and crowned with the *Aindra Mahābhiseka* after making him take an oath.' In this passage the meanings of the words 'bhauja', 'svārāja', 'vairāja' and 'pārameṣṭhya' in

87b. इन्द्रो जयति न एषा जयता अधिराजो राजतु राजयति । अथर्ववेद VI. 98. 1.

88. ये नः सपत्न्या अदत्ते भवन्निबन्दाग्निष्वाभव पाधामहे ताव । वसवो वदन्ता आदित्या उपरिषधो मोमं खेसाहमधिराजमकव ॥ अ. X. 128. 9.

89. ये देवा देवसुभः स्व त इममाहुः पावजमममिवाय सुवस्व महते सवाय महत आधि-
पत्वाय महते जावराजपावेव वो भरता राजा सोमोऽश्नाकं ब्राह्मणानां राजा । तै. सं. I. 8.
10. 2. Vide H. Dh. vol. II. p. 1217 and n. 2651.

90. स य इच्छेदेवंविश्वत्रियमयं ... सर्वलोकान्निन्देतायं सर्वदा राजां श्रेष्ठजनानां
वरमां यच्छेत् सान्नायवं भोग्यं स्वाराज्यं वैराज्यं पारमेष्ठ्यं राज्यं महाराज्यमाधिपत्यमयं
समस्तपार्थायैवपासायैवमैः सावांशुष आम्नावृत्तपार्थात् पृथिव्यै समुद्रपार्थान्ताया पकराजिनि
तमेतेनेन्द्रेण महाभिषेकेण वज्रिणं श्रापयित्वाभिषिञ्चेत् । तै. ब्रा. 39. 1.

relation to sovereignty over people are not clear. They are probably hyperbolic and grandiloquent words to convey supreme power. Even a brāhmaṇa, according to vedic texts, may perform the Vajapeya if he desires 'svārājya' which means supereminence. Paramesthin means 'Prajapati' and so pāramesthya simply means godlike power. Further there is no apparent reason why, after rising high from sāmrājya to 'pāramesthya' there should be a descent to mere 'rājya' and 'mahārājya'. Śāyana⁹¹ takes 'rājya' and 'mahārājya' at the end of the passage as referring to the position of the king in the next world. This is rather far-fetched. Jayaswal (in 'Hindu Polity', part I pp. 89-90 and p. 133) takes these words to mean 'the Bhaujya constitution &c.' relying on the occurrence of the Bhojas in Asoka's Rock Edicts V and XIII and in Khāravēla's Inscription, on the appearance of Bhojas as rulers in Western India and the town of Bhuj in Cutch and 'vairājya' as kingless system and 'svārājya' as 'self-ruling system'; but this is all unwarranted and is a fair sample of the way in which some of Jayaswal's theories are built up. It passes one's understanding how a paramount sovereign is promised *vairājya* (in Jayaswal's sense) in the Ait. Br. In the Rgveda (V. 66. 6) we have the word 'svarājya' (which probably means the same thing as 'svārājya') in 'Let us strive for an all-embracing sovereignty, which will afford protection to many'⁹². In the Śatapatha Brāhmaṇa the distinction between a king (rājan) and an emperor is very clearly expressed as follows: 'For, by offering the Rājastuya he becomes king and by the Vajapeya he becomes emperor; and the office of king is the lower and that of emperor higher' (V. 1. 1. 13). Śatapatha IX. 3. 4. 8 contains the same idea again. In Śatapatha I. 6. 4. 21 it is said 'before the slaying of Vṛtra he was Indra, it is true; but after slaying Vṛtra he became Mahendra, even as a king (rājan) becomes a mahārāja after obtaining victory'. These passages are sufficient to establish that the idea of a suzerainty extending over many kingdoms was known in the times of the Rgveda and had been fully developed before the composition of the Aitareya and Śatapatha Brāhmaṇas.

91. सायण (on ऐ. ब्रा. 37. 2. where also these words occur) explains 'साक्षात्तं धर्मेण पादने भोग्यं भोग्यमुक्तिः स्वराज्यमपराधीनत्वं वैराज्यमित्यर्थो भूपतिर्भ्यो वैशिष्ट्यम् । एतदुक्तमेतत्किम् । अथासुमित्तकमुच्यते । पारमेष्ठ्यं मयापतिलोकावतिः । तत्र राज्यमैतत्तत्त्वं माहाराज्यं तत्रत्यस्य इतरेष्व् आप्तिकम् ।' वाङ्मयराज्यं 45. 87 says 'अयं लोकस्तु वै सत्प्रजापतिर्लोको विराट्स्थितः । स्वराज्यः स्मृतो लोकः इतर्यस्यापि विस्तरम् ।'

92. आ ब्रह्मानीषच्छस्ता मित्रं वयं च सुराः । अचिद्वै बहुपादने धर्मेति स्वराज्ये । ऋ. V. 66. 6.

The Aitareya Brāhmaṇa mentions by name twelve emperors of ancient India and the Śatapatha thirteen (XIII. 5. 4. 1-19). Pāṇini explains (V. 1. 41-42) 'sarva-bhauma' as 'the lord of the whole earth'. The Amarakośa states that the words 'rāj', 'pārthiva', 'kṣmābhṛt', 'nṛpa', 'bhūpa' and 'mahīksit' are synonyms and mean 'king', that a king before whom all feudatories humble themselves is styled 'adhiśvara', 'cakravartin', 'sārvabhauma' i.e. these three last words are synonyms. The word 'cakravartin' is derived⁹³ by Kśīrasvāmin as 'one who wields lordship over a circle of kings' or 'who makes the circle (i.e. kingdom) abide by his orders'. The word 'cakravartin', though not so ancient as 'sārvabhauma', has been employed from very ancient times. The Maitri Upaniṣad 1. 4 mentions⁹⁴ 15 cakravartins. The Rājantiprakāśa (p. 58) quotes⁹⁵ a passage from the Sāmavidhāna Brāhmaṇa (III. 5. 2) 'the priest should perform the coronation with the Ekavṛṣa Sāman for that king whom he desires to be the sole ruler and whose circle of territory (he does not desire) to be overwhelmed (by an enemy)'. Here probably is one of the earliest references to the derivation of the word cakravartin. In the Mahāvagga (Selaṣutta, S. B. E. vol. X p. 102) Lord Buddha is made to say 'I am a king, an incomparable, religious king (dharma-rāja); with justice (dhammena) I turn the wheel, a wheel that is irresistible'. Here the idea of the secular cakravartin is carried into the moral and spiritual sphere. In the Nānāghāt Inscription (of about 200 B. C.) occurs the word 'apratihatacakasa' (i.e.—cakrasya). Vide A S W I, vol. V, p. 50 at p. 60. Khāravela is styled Kalinga-cakravartin in the Mañchapuri record of his chief queen (E. I. vol. XX p. 86n), 'supavatavijaya-caka' (supravṛttavijaya-cakra, in I. 14) and 'pavata-caka' (pravṛtta-cakra in I. 17) of his Hāthigumpha Inscription (E. I. vol. XX at pp. 88-89). Kautilya (IX. 1) defines the land of the cakravartin⁹⁶ as the territory on the earth spreading towards the

93. द्रुपचके राजके वर्तते स्वाम्येन चक्रं राट्टं वर्तयति वा चक्रवर्ती । क्षीरस्वानी.

94. अथ क्षिमेतैर्वा परेभ्यः महाचतुर्धराभ्यः कर्त्तव्यं । केचिन्मनुष्यमधुरिषु श्रेष्ठमनु-
कुलं पान्थर्वीनाम्बराग्रम् आश्रयति शशिन्दुहरिश्चन्द्राभ्यो नमः कु (नहुषः) सपत्नियया-
श्चनरण्याहसेनादयः । मैत्री उप. I. 4.

95. चमेर्व कामपैतेकराजः स्वाकार्य चक्रं महिहमेतेत्येकद्वेनामिषिजेत् । सामवि-
धानब्राह्मण III. 5. 2, q. in राजनीतिय. p. 58. सायण paraphrases चक्रं by मण्डलम्.

96. देशः पृथिवीं तस्यां विमपसमुद्रान्तरमुदीचीनं योजनसहस्रपरिमाणमतिर्षू-
चकवर्तिक्षेत्रम् । कौटिल्य IX. 1: कुमारीपुराणमृत्ति चिन्दुसरोवधि योजनानां दशशती
'History of India' plate IV after p. 211 where there is a wheel with eight
spokes on a pillar with an inscription (vākājahānam).

north from the sea to the Himālaya, which is a thousand *yojanas* in extent when measured in a straight line. The same idea occurs in the *Kāvyamīmāṃsā* of Rājasekhara (p. 92). Kautīlya also employs the expression 'caturanto rājā' (a king of the earth up to its four boundaries). Śānti-parva²⁷ speaks of a ruler who brings the whole earth under one umbrella. On the birth of Harṣa, the chief astrologer told his father Prabhākaravardhana that the boy would be the leader of the seven cakravartins (Harṣacarita IV). In some works the six cakravartins are said to be Māndhātā, Dhundhumāra, Hariscandra, Purūravas, Bharata, Kārtavīrya. The *Saṃhāra-parva* (15. 15-16) mentions five emperors of old viz. Yauvanāśva (Māndhātā), Bhagīratha, Kārtavīrya, Bharata and Maruṭta. Vide Dr. N. N. Law's 'Aspects of Ancient Indian Polity' pp. 17-21 for exhaustive lists of ancient emperors, from the Mahābhārata, the Śatapatha Brāhmaṇa and other works. This ideal of cakravartin was set before them by all ambitious and energetic Indian rulers from ancient times. The result was that constant wars took place. We have a galaxy of historical emperors that emulated such mythical heroes and emperors as Māndhātā and Bharata and practically realized the ideal. To name only a few, Candragupta, Aśoka, Puṣyamitra, Bhavanāga of the Bhāraṣīvas, Pravarāseṇa Vākātaka, Samudragupta and Harṣa are great names in our ancient history. Even if this ideal of universal empire had not been there, wars could not have been avoided. That was a very usual thing everywhere in the ancient world. Only about 700 years ago, Britain, which is a very small country compared to India, had three kingdoms engaged in constant warfare.

The *Matsya-purāṇa* (114. 9-10) first gives the dimensions of Bharata-varṣa from South to North (from Cape Comorin to the source of the Ganges) as one thousand *yojanas*, states that its extent is ten thousand *yojanas* (when measured upwards across the boundaries) and that on all borders of it there are Mlecchas and that Yavanas and Kiratas dwell to its east and west (verse 11) and that the king who conquers the whole of Bharata-varṣa is styled 'samrāt' (verse 15). Vide *Brahmapurāṇa* 17. 8 ff for almost the same words. The *Śukranītisāra* (I 183-187) states that a *sāmānta* is one whose yearly revenue is from 1 to 3 lakhs of silver *karṣas* without oppressing the people, the revenue of a *māṇḍalika* is from 4 to 10 lakhs, that of a *rājan* is from 11 to 20

lakhs, of a mahārāja from 21 to 50 lakhs, of a svarāj from 51 lakhs to a crore, of a virāj from two crores to ten, of the sārva-bhauma (who wields suzerainty over the whole earth i. e. Bharatavarṣa) from 11 crores to 50. Though these definitions may be regarded as scholastic and too rigid to have been practically followed they do convey a sufficiently clear idea about the power of a feudatory, a king and an emperor. The Sabhāparva²⁸ (15, 2) says 'there are kings in each house, who do what pleases them; but they do not reach the position of emperor, which title can be acquired with great difficulty'; and 'that king under whose sole dominion the world abides secures the position of samrāj'. In these and other places 'world' means 'Bharatavarṣa' for which see H. Dh. vol. II pp. 17-18. Sovereignty (sāmrajya) consisted in ancient India not necessarily or invariably in acquiring control over vassal kings in all their affairs. Generally the supreme ruler did not hanker after territory so much as after having his superior prowess acknowledged. The descriptions of digvijaya (world conquests) in the Mahābhārata (e. g. of Pāṇḍu in Ādi 113, of Arjuna and the other Pāṇḍava brothers in Sabhā, chap. 26-32) show that there was no aggrandizement by acquiring fresh territory but all that was desired was to make the several kings submit and pay tribute or offer presents. Arjuna expressly says in Sabhā 25.3 that he would bring tribute from all kings and the conquered kings are generally represented as submitting and making presents of gems, golds, horses, cows to the conqueror. The Allahabad stone pillar²⁹ Inscription of Samudragupta (Gupta Ins. p. 8) states that the pratyanta (bordering) kings of Samatāṭa and other countries and the Mālava and other tribal oligarchies fully gratified Samudragupta's commands by giving all tribute, by obeying his orders and by coming to perform obeisance. Santi 96 insists that conquests should be made according to dharma. Empire did not mean imposition of the language or the government system of the conqueror on the conquered country. The conqueror's duty as understood by ancient Indian works was quite different

28. दृष्टे दृष्टे हि राजानः स्वस्य स्वस्य विपकरतः । न च साम्राज्यमाप्तान्ते सत्त्वाद्दशब्दो हि कुच्छभाक् ॥ सभा 15, 2; यमुर्पस्तु परो राजा यस्मिन्कोकपरो जगत् । स साम्राज्यं महाराज प्राप्नो भवति योगतः ॥ सभा 14, 9-10.

29. समलङ्घ्यवाक-कामरूप कर्तुं पुरादिप्रपञ्चपतिभिर्मालबाहुनापनयैष्यन्-काभीरवाजुनसैनिकानिकाकचपरिकादिभिश्च सर्वैरद्वानाज्ञाकरणेनामायमनपरितो वित्त-यज्यन्वशासनस्य । Gupta Inscriptions p. 8.

as will be presently shown. Kautilya (XII. 1) declares¹⁰⁰ that there are three kinds of invaders, viz. *dharmavijayin* (who is satisfied with mere submission or obsequence), *lobhavijayin* (who is satisfied with gain in land and money), *asuravijayin* (who is not satisfied with land and money only but robs the defeated king of his son, wife and life). The *Nītivākyaṃṛta* (pp. 362-363, *Yuddhasamuddesa*) defines the three almost in the same words. This shows that in the first two kinds of conquests the conquered state retained its own institutions, organization and government intact. Bāṇa gives¹⁰¹ in very striking language what Harṣa proclaimed when he started against the treacherous king of Gaṇḍa and on *digovijaya*. It appears that even the queens of vanquished chiefs had to perform the duties of maids at the time of the coronation of the emperor and empress, as queen Yaśomati says to Harṣa (in *Harṣacarita* V). Vide *Saṁhā* 31. 73-74 where Bibhīṣana is said to have come with presents to Saḥadeva. Aśoka (in Kāśī Edict No. XIII in C. I. I. I, pp. 44 and 46, ed. by Hultzsch) speaks of his conquest being *dharmavijaya*. This means that he foreswore greed and cruelty and wanted that his influence be only acknowledged. The Pallava king Śivaskandavarman (of Kāñci) who had performed the Agnistoma, Vajapeya and Aśvamedha sacrifices calls himself *dharmamahārājādhirāja* (a *dharmavijayin* emperor) in E. I. vol. I p. 5. In the Dūḍiā plate of Pravarasena II, Prthvisena is styled *dharmavijayin* (E. I. vol. III p. 258 at p. 261). Samudragupta's conquest of South India seems to have been only a *dharmavijaya*. As time went on the titles of kings grew in grandiloquence. Aśoka whose empire extended at least from Afghanistan to the Bay of Bengal and included some part of the Deccan and Mysore calls himself 'rājā'. Khāravela is styled only *mahārāja* and Kalingādhipati in the Hāthigumpha Inscription.

100. जयमित्रोक्तायो धर्मसुरलोभविजयिन इति । तेषामन्यवपराधो धर्मविजयी तु सति । तमन्यवपराधेन । परेषामपि अपाद् धूमिद्वयहरणेन लोभविजयी तु सति तमर्थेनान्यवपराधेन । धूमिद्वयद्वयद्वयहरणेनासुरविजयी तं धूमिद्वयधामासुरद्वयद्वयद्वयः सति कुर्वति । कौटिल्य XII. 1; स धर्मविजयो राजा विधेयमात्रेणैव मनुजैः मानार्थमिमानेषु न स्यमिच्छति । स लोभविजयी राजा यो द्रव्येण कुतसीतिः मानार्थमिमानेषु न स्यमिच्छति । सोऽसुरविजयी यः मानार्थमानोपचतेन महीममिलयति । नीतिशा. pp. 362-363. Vide विष्णुधर्मोत्तर II. 145. 21 for *धर्मविजयी* king and *अधर्मविजयी*.

101. सर्वेषां राज्ञां सज्जीकिपन्तां कराः करद्वानाथ शस्त्रग्रहणाथ वा दृष्टान्तां विद्वद्वा-
मराणि वा ममन्तु शिरांसि धनैश्च वा कर्मपूरीकिपन्तामाज्ञा मोक्षार्थं वा शस्त्ररामवन्तु पाद-
रज्जोसि शिरस्त्राणि वा घटन्तामञ्जलपः कविघटाधन्वा वा सुषण्णतां धूमप इषवो वा सम-
लम्पन्तां वेधपट्टाः कुन्तपट्टयो वा सुपुष्टः क्षिपतामाना मक्षरगन्धर्वेषु कुपणदर्वेषु वा ।
हर्षचरित VI.

Huviska, the Kusāṇa emperor, is styled *Mahārāja-rājātirāja-deva-putra* (E. I. vol. I pp. 371, 386). Samudragupta is simply *mahārāja* (Gupta Inscriptions p. 8). But later emperors styled themselves *paramabhattāraka-mahārājādhirāja* (Gupta Inscriptions p. 70, Indore copperplate of Skandagupta of Gupta year 146 i. e. 465-66 A. D.) or sometimes 'parama-bhattāraka-mahārājādhirāja-paramesvara' (Gupta Inscriptions No. 39, p. 176 copperplate of the Valabhi king Śīlāditya in 447 of the Valabhi era i. e. 766-67 A. D.). Ancient works are not very particular about the epithets they employ when speaking of a king or an emperor. Santi (68.54) says that a king is praised with the epithets *rājan*, *bhoja*, *virāt*, *samrāt*, *keatriya*, *bhūpati* and *nrpa*.¹⁰² Daśaratha is styled *rāja* in *Ayodhya* 2.2. and *mahārāja* in 18.15 and 57.32. The *Rājanītiratnākara* (pp. 3-4) holds that kings are of three kinds; viz. emperor (*samrāt*), one who pays tribute and one who does not pay even tribute (but is not a *samrāt*), quotes several verses from a work of Nārada on politics and states that the words *cakravartin*, *samrāt*, *adhiśvara* and *mahārāja* are synonyms. Kings aspiring to be called *samrāt* performed the *Rājasūya* and *Aśvamedha* in ancient India. The *Saṁhāparva* 13.30 speaks of *Rājasūya* as fit to be performed by a *samrāt*. *Senāpati Puṣyamitra* (about 180 B. C.) is said to have performed two *Aśvamedhas* (vide E. I. vol. XX p. 54, 57). The *Ghoṣuṇḍī* Inscription (E. I. vol. 16 p. 25 and E. I. vol. 22 p. 198) speaks of *Sarvatāta*, a great devotee of Viṣṇu, as a performer of *Aśvamedha*. *Khāravela* (who was a Jain) performed *Rājasūya* (E. I. vol. XX at p. 79). The *Vākātaka* king *Pravarasena I* had performed four *Aśvamedhas* (E. I. vol. III p. 258 and Gupta Inscriptions No. 55). In the *Vākātaka* copperplates the *Bhārasīyas* are extolled as having performed ten *Aśvamedhas* (E. I. III. 258 at p. 260). The *Saṅkayana* king *Vijayadevavarma*, whose capital was at *Vengi* in *Āndhra*, is said to have performed an *Aśvamedha* (E. I. IX p. 56, about 350 A. D.). The *Čālukya* king *Pulakeśin I* had performed *Aśvamedha* (E. I. vol. VI p. 1 and IX. p. 100) about 550 A. D. *Puṣyamitra* is styled simply *Senāpati* in the *Mālavikāgnimitra* Act V when he sends a message to his son about attending the *Rājasūya* in which he had been engaged. For the significance of the *Abhiśecanīya* rite in *Rājasūya* vide H. of Dh. vol. II pp. 1216-1218. The *Kadambas* are said to have performed *Aśvamedhas* in the *Nilambur* plates (E. I. vol. VIII p. 148). The *Viṣṇukundin*

102. राजा भोजो विराट् सभाद् धर्मियो वृषतिर्दुषः । न हर्षिः स्तुपते इत्यर्थः कर्त्तव्यमिति ॥ जामिनि 68. 34.

Mahārāja Mādhavavarman performed eleven *Āśvamedhas* and one thousand *Agnistomas* (I. H. Q. vol. IX p. 278). Vide H. Dh. vol. II pages 1238-1239 for a few more historic examples of the performers of *Āśvamedha*.

Kautilya (VII 16) prescribes that the conqueror should not covet the territory, wealth, sons and wives of the slain (in battle), that he should re-instate the late king's kinsmen in their proper places (or positions), that he should instal the son of the deceased king on the throne of his father and adds that the emperor who kills or imprisons the kings that submit and covets their lands, wealth, sons or wives provokes the *maṇḍala* (the circle of States) and makes it rise against himself. Yājñavalkya (I 342-43) prescribes that it is the duty of the conqueror to protect the conquered country in the same way as his own country and the conqueror is to respect the customs of the conquered country, its laws and the usages of the families therein.

The *Viṣṇudharmasūtra*¹⁰² (III 42 and 47-49) enjoins upon the conqueror not to uproot the usages of the conquered country, to establish in its capital some kinsman (of the slain king) and not to destroy the royal family unless it be of low birth. Manu (VII 202-203) and *Agnipurāṇa* 236-22 prescribe similar rules. The *Rāmāyana* (VII 62-18-19) requires the conqueror, after uprooting the king, to establish another king there in order to ensure stable government. Vide *Sānti* 33-43-46 quoted above on p. 40. *Kātyāyana* (q. in the *Rājanītiprakāśa* p. 411) prescribes that even when the (vanquished) king is at fault, the conqueror should not ruin the country (for the fault of the vanquished king), since he (the vanquished king) did not start (on his career of) wrong-doing with the consent of his subjects. The *Rājanītiprakāśa* draws from this the conclusion that the ministers with whose consent the war was started may be harassed by the conqueror. This advice was generally followed by ancient conquerors and emperors. Rudradāman (150 A. D.) is styled the establisher of kings that had lost their territories (in the *Junāgadh Ins.*, E. I. vol. VIII at p. 44) and in the Allahabad Stone Pillar Inscription of Samudragupta it is said that his fame travelled over the whole world because of his

102. परदेहावासी तद्देशधर्मोन्नोच्छिन्नात् । ... राजा परदुरावासी तु सच तत्कुलीन-
मभिषिजेत् । न राजकुलमुच्छिन्नात् । अग्रेष्वकुलीनराजकुलात् । विष्णुधर्मसूत्र. III. 42,
47-49; बुद्धस्यापि नोद्देश्य तद्देशं न विनाशयेत् । न मज्झिमसुत्तो परमादुर्गपेक्षं प्रकीर्ते ।
कात्यायन quoted by राजनीतिज्ञ p. 411, which adds वेदात्मजावादीनामनुयायिणां पञ्चापे
नृत्तिस्तान् पीडयेदेषति च्छेषम्.

having re-established several royal families that had lost their kingdoms (Gupta Inscriptions, p. 8). The Śukranitisāra (IV. 7:397-399) requires the conqueror to support the well-behaved son and the queen of the vanquished king or to give a fourth of the conquered kingdom to him and only $\frac{1}{8}$ part of it to one who is not endowed with good qualities and the conqueror may appropriate the whole treasury of the conquered.

The coronation of a king was a very solemn and important ceremony. Reasons of space forbid any lengthy treatment but something must be said about it. In the medieval text-books, various procedures are described from different sources. The Rājanītiprakāśa (pp. 42-112), the Nīti-mayukha (pp. 1-13) and the Rājadharmakaustubha (pp. 237-374), the Rāja, Dh. K. (II. pp. 6-10) quote procedures of coronation from the Ait. Br., the Gopatha Br., the Sāmavidhāna Br., the Brahmapurāṇa, the Viṣṇudharmottara and other works. The procedure from the Purāṇas probably originated when persons of the śūdra caste frequently became kings. The Rājanītiprakāśa¹⁰⁴ (p. 112) says that there being different procedures of coronation rites based on Vedic texts, some hold, following the dictum of Śābara (on Jaimini II. 4-9), that the coronation rite should comprehend all the different items mentioned in the several vedic texts (provided they do not contradict each other), while others hold that there should be no comprehensive inclusion of all items but each vedic or smṛti procedure should be followed separately by itself. Mitrāmīśra concludes that the purohita should follow that course which is nearest to his own śākhā. The Rājadharmakaustubha (p. 339) says that as the rite described in the Viṣṇudharmottara contains the largest number of details, one who is able to do so, may follow that Purāṇa, while for those who cannot do so there is an option or students of the Rgveda may follow the Rgvidhāna mode, of the Sāmaveda the Sāmavidhāna Br. and all may follow the Purāṇa mode of coronation. I shall first briefly indicate what procedure was followed in some vedic texts such as the Gopatha Brāhmaṇa, the Sāmavidhāna Br. and in the Gṛhyasūtras, then point out what was done in the times of the

104. पूर्वोक्तानां औतानामभिषेकानामपि द्वाणामेकवैपसंहारेणैकोभिषेकः कार्यः सर्वशास्त्रप्रत्ययमेकं कर्मेति न्यायादित्येके । अग्रे तु औतानां स्मार्तानां च तत्तच्छ्रुति-स्मृतिपाठानामष्टपसंहारेणैकेकप्रयोगमिच्छन्ति । तदेवं यस्य पुरोहितस्य स्वशास्त्राधिकृतत्वेन यः यथाऽसिद्धितस्तेनैव तेषाभिषेकः कार्यः । राजनीतिप्रकाश p. 112. On एकं वा संयोग-रूपचोदनास्यपिशोषात्, (Jai. II. 4, 2) Śābara remarks न चैतदस्ति यदुक्तं शास्त्रा-न्तरेषु कर्मैव इति । सर्वशास्त्रप्रत्ययं सर्वशास्त्रप्रत्ययं चैकं कर्म । अधस्तंयोगस्यपिशोषात्.

epics and set out the prominent items in the procedure of the *purāṇas*.

The *Aitareya Brāhmaṇa* (38) describes the Great Coronation of Indra (*Aindra mahābhiseka*) and in that connection mentions how the kings of the *Sātvatas* in the south were called 'Bhoja' after coronation, the kings of the eastern countries were called 'samrāt', the kings in the west were called 'svarāt' and the kings of the north i. e. of countries beyond the *Himālaya* (viz. *Uttarakurus* and *Uttaramadras*) were called 'virāt'. Then (in 39) it states that the *ksatriya* king is to be made to take an oath and is to be crowned in the manner of the *Aindra Mahābhiseka*¹⁰⁵. The oath which the *ksatriya* is to take before the priest with faith is: 'the merit of sacrifices and good works that belongs to me from the night I was born up to the night on which I shall die, my worlds, good deeds, life, progeny,—these you may destroy if I hate (or prove false to) thee'. Vide note 41 above for the coronation oath in *Sānti* 59. 106 ff. It will be noticed that this passage of the *Ait. Br.* contains no undertaking given by the king to the people to rule according to *dharma* or for their welfare. So this passage cannot strictly be interpreted as postulating a contractual basis for the authority or power of the king, as done by Jayaswal ('in *Hindu Polity*' part II. p. 28). The *Ait. Br.* sets out the materials (*sambhāras*) for the coronation of a king (in chap. 39.2) viz. fruits of *nyagrodha*, *udumbara*, *āśvattha* and *plakṣa* trees, grains of small rice, large-sized rice, *priyangu* and barley, a couch of *udumbara* with span-long feet, a spoon with a four-cornered scooped basin of *udumbara* and an *udumbara* vessel, on one of which two the other materials were to be placed and curds, honey, clarified butter and rain water gathered when the sun is shining. The mantras to be recited are mentioned in 39.3-4 and the fee in 39.6. In the *Rājasūya* (to be performed only by a *ksatriya*) described in the *Brāhmaṇas* and *sūtras*, the principal rite is the *Abhisekantiya* in which the king is bathed with waters brought from seventeen sources in seventeen vessels of *udumbara* wood. Vide H. Dh. vol. II. pp. 1216-1218 for the rite. The *Rājantiprakāśa* (p. 92-107) explains the procedure of coronation from the *Ait. Br.* In the *Rājasūya*, among the preliminary rites are the offerings

105. एतेनैन्द्रेण महाभिषेकेन सविषं शपयित्वा अभिषिजेद्... स ब्रह्मासह अद्भुतः ।
 वां च सविमजापेक्षं वां च मेतस्मिन् तदुभयमन्त्रेणाहूतं मे लोकं सुकृत्मातुः यज्ञां बुधीषा
 पदि ते द्रुष्टव्यमिति । ऐ. ब्रा. 39. 1.

called 'ratninām havinśi' (the offerings in the houses of the jewels, which are twelve). Vide H. Dh. vol. II pp. 1215-16. They have a symbolical value. The person to be crowned recognizes the importance of his high functionaries and is declared to be their king and they are supposed to approve of him as king. In the Abhiṣecaniya rite of the Rājasūya, there are two parts, a religious and a popular. First, the adhvaryu and the other priests sprinkle the king with holy water collected from various sources in vessels; then the king's brother, a friendly kṣatriya and a vaiśya also sprinkle him with the holy water. This last is symbolic of the popular approval of the coronation.

The Tai. Br. II. 7. 15-17 deals with coronation. It first gives the seven mantras for seven *dhutis* that are offered. A tiger skin is spread on which the king is seated and he is sprinkled with holy water in which sprouts of barley and dūrvā grass are mixed up; the king ascends a chariot to the accompaniment of mantras, then the four wheels of the chariot are touched; the purohita and charioteer are addressed with mantras; Anumati, the Earth (as mother), and Heaven (as father) are implored to approve of the coronation, the king is made to look up towards the Sun and then the king looks on the subjects; the king then undergoes shaving when seated on a chair of udumbara wood, then his arms and head are anointed with milk blended with clarified butter.

The Nītimayūkha pp. 4-5, Rājāniti prakāśa pp. 42-43, Rājadharmakāustubha pp. 335-336 quote a passage from the Gopatha Brāhmaṇa¹⁰⁶ on the rites of coronation as follows:—We shall expound the rite of the coronation of the king. Having

106. आधर्षणमोपधमाह्वने—अथ राज्ञोभिषेकनिधिं वपाकयास्तमः । वित्तवयमुदीन-
म्पराय संभूय वोपशकलशाय वोपश किल्वानि वस्तीकस्य च सुतिकां सर्वांश्च सर्वस्मात् सर्व-
बीजानि । तत्र चत्वारः सौवर्णीकवाराः राजवाधवारस्ताम्राध्वारा मुग्गवाः कुम्भाः । तान्
हृदे सरसि वोर्ध्वोत्थितो नाभेनाम हस्तयुक्तेन दूरयित्वा देविपुत्रे संस्थाप्य कुम्भेषु वित्तमेकेकं
धृत्वात् । सर्वांश्च सर्वस्मात् सर्वबीजानि च प्रक्षिप्यामर्चयित्वाजितिराधुनैः स्वस्त्वयने;
सौवर्णेषु संस्थाप्य, संस्थाप्यैः संसिकीयेष्वथ राजतेषु, मेघग्रेवरोहामुर्वेयस्ताम्रदुः संवेदांसं वमीन्वा
श्रमतापीः यानमुक्तेन च मुग्गवेषु । ततस्तान् कलशान् दूरयित्वा ओजिवैः पवित्रतमे राजान-
मभिषिञ्चेत् । सुमिमिन्दैः च यथादित्वा क्षत्रियं न हति (इममिन्द्र वर्षेय क्षत्रियं न हति) ।
मितासमसास्यमभिमन्त्रयेत् । एवमभिषिक्तस्तु रसान्नादनीषाद् विष्णुष्व दद्याद्भोसदृशं
समुत्प्रेम्यः कर्त्तव्यं वामवरम् । विपुले पशुः यामोति मुष्टके धरो जितशत्रुः सदा भवेद्विजि । राज-
नीतिषु, pp. 42-43, राजव. को. pp. 335-336, नीतिमयूख pp. 4-5. There are a few
variants due to the scribes and the editors not being able to read
the Ma properly. The कौशिकशूच 17. 28 reads 'इममिन्द्र वर्षेय क्षत्रियं न
which is अयवर्षेय IV. 22. 1.

collected the materials required such as bilva fruit, viz. sixteen jars, sixteen bilva fruits, earth from an ant-hill, all kinds of husked grains, all liquids, and all kinds of grains (unhusked). There should be four jars each of gold, silver, copper and clay. Having filled them, keeping their mouths up, with water from a deep reservoir of water or a lake to the accompaniment of the mantra 'nāmaināma' (?) and having put the jars down on the surface of the altar, he (the priest) should place one bilva fruit apiece in each of the 16 jars and cast (into the jars) the husked and unhusked grains and all fluids, adding them (to the water) in the golden jars with the mantras called Abhaya (Atharvaveda 19.15), Aparājita, Āyusya (Atharvaveda I. 30) and Svastyayana ¹⁰⁷ (Atharvaveda I. 21, VII. 85. 1, VII. 86. 1, VII. 117.1), in the silver jars, with the mantras called saṁsṛavya (Atharvaveda 19.1) and Samsikṭiya (Atharvaveda II. 26), in the copper jars with the mantras called Bhūisajya (Atharva VII. 45 'janād') and Amhomuc and in the earthen jars with Samveśa, Samvargya and Śantātiya mantras and with the Prāṇa hymn (Atharvaveda XI. 4). He should then bathe the king with (the water of) the jars held by very holy and learned brāhmanas (śrotriya). He should consecrate the king seated on the throne with the mantra (Atharvaveda IV. 22.1) 'O Indra, make this my ksatriya prosper'. (The king) being thus bathed should eat the several liquids, should make gifts of a thousand cows to the brāhmaṇa priests who assist the chief priest, bestow a good village on the chief priest. He (the king) thereby acquires great glory, enjoys the earth and always vanquishes his foes'.

107. For Svastyayana vide H. Dh. II. p. 83 (a). For Āyusya vide Kauśikasūtra 52. 18; for Abhaya, Kauśika 16. 8; for Aparājita hymns Kauśikasūtra 14. 7 note; for Svastyayana, Kauśika 8. 2n; the Śantātiya are Atharvaveda I. 6. 1, I. 33. 1, VII. 68, VII. 69. 1 &c. The Amhomuc verses are Atharva IV. 33. 29. Vide Nīlīmāyūka p. 25 for Aparājita mantras. The राजधर्म-काण्ड (p. 7) quotes from the बह्वश्रुतम् a long passage in which the mantras to be recited by the purohita are stated to be these 'अथोदश महासन्वाह तपयेज्जातेवेदमि । मर्त्यं चैवानतिर्यं साधधर्ममणी तथा । आयुष्यममर्त्यं चैव तथा स्वस्वपदं परम् । वैष्णवानामथ सन्वाह तथा पौरन्दरानपि । सावित्राह्वरीर्वाथ वादणानथ सर्वथा' ॥ and explains अतावाडिति अथोदश सन्वाहः । यथाः इन्द्रयन्वासुदेवादयः । अगतिर्यथा आयुः शिशान इति । सन्धयः आगत्यत्यमिति । धर्ममणः वास्ते अथ पौरास्तनुवः इति । अमप-स्वस्वपदं एत इन्द्र स्वस्तिदा इति । अतावाड् is the first word of वाज. सं. 18. 38, अगतिर्यथा is वा. X. 103, आगत्य सन्धयः is ते. वा. III. 12. 3. 2 and वास्ते अथ पौरास्तनुवः is ते. वा. I. 1. 7. 3, एत इन्द्र is अ. VIII. 61. 13 and स्वस्तिदा is वा. X. 152. 2.

The Sāmavidhāna Brāhmaṇa¹⁰⁸ (III. 5) describes a shorter rite: "The priest should crown the king when the moon is in the Pusa or Śravaṇa constellation. Having brought waters (separately in separate jars) from famous holy rivers (like the Ganges)¹⁰⁹ and from the sea and having mixed in them rice, barley, sesame and māsa (black beans) grains and curds, honey, flowers and gold, he should bathe the king seated on an auspicious throne made of udumbara wood on which is spread tiger-skin with the hair outside, from horn-pipes cut off from the horns of living cows to the accompaniment of the *rahasya* mantra 'abhirātrvyaḥ' (you are without an enemy &c., Rg. VIII. 21.13, Sāmaveda 399 and 1489). He should bathe the king to the accompaniment of the Ekavṛsa hymn (instead of Rg. VIII. 21.13) whom he desires to be the sole ruler (of the earth) and whose circle of kings is desired by him not to be overwhelmed by an enemy. On the priest performing the coronation rite the king should bestow the best village, a hundred maid servants and a thousand cows and (the king) should be obedient to him (the officiating priest)".

The Baud. Gṛhyaśeṣasūtra (I. 23) contains the procedure of coronation, the whole of which is quoted by the Bālabhāṭṭa on the Mitākṣarā on Yaj. I. 309. It is briefly as follows:—On the 5th or 13th *tithi* of the bright half when the moon is in Pusa or Śravaṇa or in any other auspicious constellation (*nakṣatra*), two brāhmaṇas are fed (the day previous). Then a worthy *purohita* is chosen, who mutters certain texts. At sunset the *purohita* makes a lotus-like circle in which are collected the materials viz. waters of the ocean and of rivers mixed with rice, barley, sesame, māsa and *pañcagavya*, and a *bhadrāsana* made of udumbara, a tiger-skin, and golden jars and horns of cows. In the north-east part of the palace, a *homa* is performed with eight thousand *āhuti*s (oblations) of rice &c. to the accompaniment of the *vyāhṛti*s, the *Gāyatrī* and the *mantra* to Tryambaka

108. सामविधानब्राह्मणेति—राजानमभिवचयेत् तिर्यगेन अवयेन वा । अतिवचै-
तिलमवैद्यिमधुसुमनोजातकपिपंशस्विमीम्यो नदीन्वाः समुद्राक्षोदुकाग्याह्वयोदुम्भरे भद्रा-
सने रेषामि चर्मण्युत्तरलोम्पासीनं जीवन्तीनां मया शुद्धकोशिरमिविज्जुमातुष इति राहयेन ।
ये कामयेतेकराजः रषादिति नारय चक्रं प्रतिहृन्पेतेरपेकवृषेयामिविजेत् । अभिवेक्ये दद्या-
द्वयानवरं दासीशतं सहस्रं तद्वर्धनञ्च भवेत् । इति । सामविधानब्रा. III. 5. 1-3 quoted by
राजनीतिय. p. 58 and राजघ. की. p. 338; both quote the gloss of Mādhavā-
cārya on this.

109. The भारविज्ञा who became allied to the राक्षसक by marriage are described as
मावीरव्यमलजलसुर्षाभिविकानां दृशाश्चमेषाधुवनताता नारदिवानां
E. I. vol. III. p. 258.

(Tai. S. I. 8. 6. 2). The priest first propitiates the goddess Lakṣmī with the hymn¹¹⁰ to Śrī and then washes the crown with cow's urine and dung, milk, curds, clarified butter and with water mixed with *lakṣas* to the accompaniment of appropriate mantras, and ties an amulet (*pratiseṇa*), and sprinkles the king and his conveyance (horse). At sunrise next day (the day of coronation) the tiger-skin is spread on the throne, the king sits thereon facing the east, the priest takes the golden jars and sprinkles the king with water falling upon him from the cone-like horns of cows with several mantras (such as those addressed to waters, Varuṇa &c.). After the king is made to take a bath, a fee of a thousand *niṣkas* and a hundred *dāśi* is paid to the brahmanas. Then the crown is placed on his head and drums are beaten.

The Kausikasūtra of the Atharvaveda (in 17.1-10) describes the abhiṣeka (called *laghu*) performed on the Yuvarāja, Māṇḍalika, Sāmanta and Senāpati and (in 17.11-34) describes the mahābhiṣeka of the king.

In the Rāmāyaṇa there are numerous references to coronation. In the Yuddhakāṇḍa 131 we have a lengthy description of the coronation of Rāma. Some of the salient features are: Rāma was shaved that day, had a bath and put on costly clothes. Sītā also was suitably dressed and ornamented. Rāma sat in a chariot and went through the capital, when Bharata held the reins, Śatrughna held the umbrella, Lakṣmana the white *chouvie*; then Rāma rode an elephant; drums were beaten and conches were blown; as auspicious signs gold, cows, maidens, brahmanas, men with sweetmeats in their hands passed in front of Rāma; the citizens had raised banners on every house; Jāmbavān, Hamuṇān and two others brought four jars full of sea-water and waters of five hundred rivers were brought

110. The Viṣṇudharmottara (II. 123. 2-6) states that the hymn to Śrī is different for each veda; the hymn of 15 verses beginning with 'Hiranyavarṇam harinim' occurring in the pariṣṭa to the Rgveda is the one for Rgveda, the hymn of four verses beginning with 'rathe akṣeṣa vṛṣabhaṣya vāje' (Tai. Br. II. 7. 7) is the Śrīśukta for the Yajurveda, the verse 'śrīyanta iva' (267. 1319) for Sāmaveda and 'śrīyam dhātūr mayi dehi' is the one for Atharvaveda. The Agnipurāṇa (237. 2-17) contains a hymn to Śrī, which is not vedic but paurāṇic. Similarly the Rājadharmakautubha (pp. 367-370) contains a long paurāṇic hymn (said to have been repeated by Indra) to Śrī which is to be recited while the king was to be seated on the throne after coronation. It is taken from the Viṣṇupurāṇa I. 9.

in jars; the aged Vasistha, the family priest, seated Rāma and Sītā on a jewelled throne; Vasistha and other sages sprinkled Rāma with the holy and scented waters, then maidens, the ministers, soldiers, the guilds of merchants also sprinkled Rāma; Vasistha placed an ancient crown on Rāma's head; there was dancing and singing; Rāma gave presents to the priests and to his friends and to such helpers as Sugriva, Angada, Bibhisan and others and Sītā gave a necklace to Hammān. In the Ayodhyakāṇḍa 15 we have a description of preparations for the abhiṣeka of Rāma as yuvarāja. The Raghuvamśa XVII. 10 mentions the coronation of Kusa's son with waters of holy rivers (tirthas) from golden jars.

In the Mahābhārata also there are several references to and descriptions of coronation. Vide Sabhā 33 (where people of all castes including śūdras were invited at the Rājasthya, vv 41-42) for the coronation of Yudhiṣṭhira; Śānti 40 (in verses 9-13 the materials for coronation are described); Adi 44, 85, 101 (only references).

The sambhāras (materials required) of coronation are stated in the Pratimānātaka (I. 1) ascribed to Bhāsa and in the Pañcatantra III (after verse 75).

In the Agnipurāṇa, chap. 218 deals with coronation and chap. 219 sets out the mantras. The following are the principal items in the ceremony; bath (with water in which sesame and mustard are mixed), seating on bhadrāsana, proclamation of *abhaya* (security and non-injury to all), releasing some prisoners from jail, Aindri Śānti, fast by king, recital of mantras, sanctifying the head and other limbs of the king with earth taken from the top of a mountain and from other places, sprinkling *pañcagavya*, sprinkling of water from four jars of gold, silver, copper and earth by amātyas of the four varṇas, *abhiṣeka* by a Rgvedin with water mixed with honey, by Chandoga with water mixed with kusa grass, by Yajurvedin and Atharvavedin brāhmaṇas touching king's head and throat with yellow pigment, singing and beating of musical instruments, holding of chowrie and fan before the king, king's looking into a mirror and clarified butter, worship of Viṣṇu and other gods, sitting on a tiger-skin below which there are four skins viz. of lion, cheeta, cat and bull; purohita to give madhuparka, to tie *paṭṭa* (a fillet or tiara) round the king's head and to place the crown on his head; presentation of ministers by the *pratihāra*;

king to give presents to the priests and other brāhmaṇas; going round fire; doing obeisance to elders; touching a bull; worshipping a cow with calf; riding a horse; honouring an elephant and riding it; procession in the capital; honouring all people and taking leave of them.

There are descriptions of the abhiṣeka of a yuvarāja (as of Bhīma in Śānti 41), of a great commander (as of Bhīma in Udyogaparva 155.26-32), of Droṇa in Droṇaparva 5.39-43, of Skanda in Salyaparva 45.

The Rājānitiprakāśa (pp. 49-83), the Rājadharmakaustubha (pp. 318-363) and Nītinayukha pp. 1-4 quote from the Viṣṇudharmottara almost the whole of chapters 21-22 of the 2nd khanda that deal with the rites and mantras of coronation. It appears that the Kaustubha appropriates all the glosses of Mitraniśra. The Viṣṇudharmottara (II. 19) sets out first the Śānti (propitiatory) rite in honour of Indra (called the Paurandari or Aindri Śānti). It is impossible to give the details here, but a few matters may be noticed. The purāṇa (in II. 21) includes all the details from the Vedic texts (such as Svastyayana, Āyusya, Abhaya and Aparājita hymns) and adds other rites also. It mentions the procedure stated above from the Agnipurāṇa and employs Vedic mantras in doing so. In II. 22 the Viṣṇudharmottara gives purāṇa mantras in 182 verses, in which such gods as Brahmā, Naksatras (from Kṛttikā to Bharanī), the planets, 14 Manus, 11 Rudras, Viśve-Devas, Gandharvas and Apsarases, dānavas, dākinīs, birds like Garuḍa, nāgas, sages like Veda-Vyāsa, emperors like Prthu, Dilīpa, Bharata, vedas and vidyās, rivers &c. are invoked to crown the king.

The Rājadharmakaustubha gives the most elaborate description of coronation. First a śānti rite is performed, then on the next (2nd) day, a sacrifice to Īśana (Rudra); on the 3rd day worship of the planets and other deities like waters, the earth, Nārāyaṇa, Indra &c. and the invocation of naksatras; on the 4th day a *yāga* for naksatras; on the 5th day at night a sacrifice to the goddess Nīrti (a clay idol seated on an ass with dark vesture); on the sixth day Aindri Śānti (propitiatory rite in honour of Indra); then the rites prescribed in the Viṣṇudharmottara purāṇa.

The Viṣṇudharmottara notes (II. 18. 2-4) that on the death of the reigning king, there is no waiting for an auspicious time.

The successor should be bathed with water in which sesame and mustard are mixed, proclamation should be issued in his name that he has succeeded as king, the purohita and astrologer should show him to the people while he occupies a seat other than that occupied by the late king; the king should honour the people, proclaim peace and security, set free some prisoners and wait for the formal coronation. The *Rājanītiprakāśa* (p. 62) adds that on the death of a king his successor should be crowned one year thereafter and that when a king abdicates his successor may be crowned on any auspicious day without waiting for a year. From the fact that the Kalinga king Khāravela was crowned in his 25th year and the fact that the *Bārhaspatya-sūtra*¹¹¹ (I. 89-90) states that up to the 25th year the prince may spend his time in play and education and then in earning wealth, Jayaswal (in 'Hindu Polity' part II p. 52) concludes that a Hindu coronation could not take place before the 25th year. This is proving too much. The *Bārhaspatya-sūtra* says not a word about the *age of coronation*. Authorities like the *Viṣṇudharmottara* require waiting for a year only after the death of the former king.

The *Viṣṇudharmottara*¹¹² (II. 7) specifies at great length the qualities of the principal queen (*agra-mahīṣī*), which are quoted by the *Rājanītikaustubha* pp. 249-250. The chief queen should have the coronation rite performed along with the king or she should be separately crowned after the king. Manu VII. 77 advises the king to marry a lady of noble family, of the same caste, of charming appearance and possessed of good qualities. The *Rājatarangīnī* (VIII. 82) notes that Jayamati, the queen of the good king Uccala of Kashmir (1101-1111 A. D.), always occupied half his throne.

The *Nītimayūkha* and *Rājadharmakaustubha* give the most detailed description of the *Aindri Śānti*. For want of space it has to be passed over. The *Rājanītiprakāśa* (pp. 63-66) and *Rājadharmakaustubha* (pp. 340-346) contain in one place a summary of the whole ceremony after *Aindri Śānti* commencing one day previous to the actual day of coronation. One detail of the

111. पञ्चविंशतिवर्षं वायत् कीडाविसां त्वसनात् कुर्वात् । अत उन्नरमर्धार्जनम् ।
बार्हस्पत्यसूत्र I. 89-90.

112. एवं मुण्यगोपेता नरेन्द्रेण सहास्य । अभिषेचया भवेद्वाग्ने राज्यस्येन सुपेय वा ॥
विष्णुधर्मोत्तर II. 7; § on which रा. ध. कौ. p. 249 remarks राज्ञा सहोन्नमरिषी अभि-
षेकया अथवा अभिषिकेन राज्ञा पञ्चात्त्वयमभिषेकया इत्युक्तम् ।

rites is interesting, viz. after the learned brāhmanas and priests sprinkle the king with holy waters from several jars to the accompaniment of mantras and a Ṛgvedin brāhmana touches the king's head and throat with powder of *gorocanū* with the mantra 'gandhadvārām' (Tai. A. X. 1.10), principal virtuous ladies, whose sons are alive, of the four varnas and also of mixed castes reciting auspicious songs (except the śūdra ladies who remain silent) should sprinkle the king with the waters derived from the sea and other holy places.¹¹² There is a graphic description of the coronation of Shivaji^{112a} the founder of the Maratha Empire in 1674 A. D. in the chronicle (*bakhar*) compiled by Krishnaji Anant Sabbasād (ed. by K. N. Sane, pp. 98-104), where it is said that a costly throne was prepared, from 108 places waters were brought in 108 golden jars (95 *tirthas* are actually named), Gāgābhāṭṭa and other brāhmanas officiated and sprinkled waters on the king, large gifts including the sixteen mahādānas were made. Eight ministers stood round the throne (whose names and offices are set out), the head of the ecclesiastical department called Panditrao being to the right and the prime minister (*mukhya pradhāna*) to the left, an umbrella (*chatra*) set with jewels was held over his head, new golden coins were struck and a new era was started called 'Rājyābhiṣeka' era commencing from that year. In a small work called 'Shivārāja-rājyābhiṣeka-kalpataru' (published in the quarterly Journal of the Bhārata-itihāsa-samsodhaka Mandala at Poona, vol. X part I pp. 28-40) in 236 verses it is stated that a Yogin named Niscalapuri, an adept in Tantrika rites, got a second coronation of Shivaji performed over three months after that performed by Gāgābhāṭṭa, with Tantrika mantras on Wednesday the 5th of the bright half of Āsvina sake 1596, one interesting fact stated being that Shivaji went through a form of marriage with valdika mantras with his wives that had already been married to him with paurāṇic mantras.

112. सर्वे मुख्या ब्राह्मणवृद्धिपदेष्टुः पवित्रतः शुक्लस्ये नासौ मूर्ध्नावसिका-
याद्य वधासम्भवं समुद्रादिनासातीर्षाद्वैजैरभिषिञ्च्युः । शुद्धाद्यास्तुष्णीम् । राजनीतिपकाश
p. 66. Vide also राजधर्मकोस्तुभ p. 346 and नीतिमण्डल p. 12 for similar words.

112a. For a detailed and graphic description of the coronation of King Shivaji in 1674 A. D. vide 'Shiva-chatrapatimahārāja-caritra' by Malhar Ramrao Chitais (ed. in 1882) pp. 120-125 (in Marathi). Shivaji's upanayana was performed on the 5th of the bright half of Jyeshtha; for seven days various rites went on; Vināyakaśānti, Grahaśānti, Aindri and Paurāṇa-dāri are said to have been performed and he was actually crowned on the 13th of the bright half of Jyeshtha. In Sambhāji-rāja-caritra by the same author (edited by Rao Bahadur K. N. Sane, 3rd ed. of 1915) at p. 3 there is a description of the coronation of Sambhāji, son of Shivaji.

The symbols of royalty viz. the umbrella, the chowries and the cane stick are brought in to the king by principal ministers. The Viṣṇudharmottara (II. 12) states that the *cāmara* for the king must be made from the tails of *camari* deer and must be all white with a handle of gold or silver and that the one for a councillor or purohita should be yellowish, while the same *parāṇa* in II. 13 describes the requisites of a royal umbrella. That the umbrella and *cāmaras* were inseparable emblems of sovereignty is emphasized by Kalidāsa in Raghuvamśa III. 16. Vide the Brhatsamhitā, chap. 71 and 72, for *cāmara* and umbrella.

It appears that sometimes a king took another name on coronation which was called *abhiṣekānāma*. Vide Dr. R. C. Majumdar's 'Champā' p. 157 for a list of such names from Champā and Dr. Minakshi's 'Administrative and social life under Pallavas' p. 39 for the Pallava Rājasimha having the coronation name Nārasiṃhavarman. Certain kings, when they performed *Āśvamedha*, assumed new titles e. g. Kumāragupta I seems to have assumed the title of Mahendra, as is clear from some of his coins on which his name and title occur.

The Brhatsamhitā of Varāhamihira (chap. 48) lays down that the *paṭṭa* (tiara) for the king and others should be made of pure gold, that their length should be double of the breadth in the middle of it, that there should be five sigrettes in the king's tiara, three in the queen's and *yuvarāja's*, one in that of the commander-in-chief and none in the one that the king may give to a person as a mark of favour. Utpala in his com. on the Brhatsamhitā says that *paṭṭa* is the same as *mukuta*, while acc. to the Nītimayūkha (p. 13) and other works *paṭṭa* is tied on the forehead and *mukuta* (crown) is placed on the king's head. Vide Rājanttiprakāśa (pp. 54-55) and Rājadharmakaustubha (p. 324) for further details. The Viṣṇudharmottara (II. 14) describes the characteristics of *bhadrāsana* (the throne) for the king; vide also Rājanttiprakāśa pp. 51-52. It must be made of gold, silver or copper or a tree from which milky juice oozes when cut, it was to be one cubit and half high for a *samrāt*, 1½ cubit for a king and one cubit high for a feudatory (*sāmanta*).

The Viṣṇudharmottara (II. 162) states that on every anniversary of the first coronation when the moon is in the same *nakṣatra* as that on which the first coronation took place the king should repeat the rites of coronation. The Brahmapurāṇa

quoted by the R. D. K. (p. 10) also says the same.^{115b} Vide *Rājantiprakāśa* p. 115 and *Kaustubha* p. 379 also.

Manu (VII 217-220) warns the king against poisoning. 'The king should partake of food that is well examined and prepared by servants that are trust-worthy (lit. as if they were his own self), that know the proper times (for dining), that cannot be won over and over the food spells destroying poison should have been muttered. He should mix up in all that he partakes medicines that are antidotes against poison and should always wear gems that work against poison. Only women devoted to him and well examined and found safe as regards their dress and ornaments should be allowed to touch him when fanning or bathing him or applying perfumes to his body. The king should take care in this way as regards his vehicles, bed, food, bath, applying perfumes and all ornamentation'. *Kām.* VII 8 and *Matsya* 219.10 are very similar to Manu VII 220. *Kautilya* (I. 17) states that the king should first secure his personal safety against his sons and wives and then the security of the kingdom against near and distant enemies. He first deals with safety from his own sons, the princes. The opinions of various authors on polity are cited (some of which have been noted above) viz. secret punishment (acc. to *Bhāradvāja*), keeping under guard in one place (acc. to *Viśalakṣa*), keeping the prince in a fort under the boundary guard (acc. to the *Pārāśaras*), keeping the prince away from his own kingdom in a fort belonging to a feudatory (acc. to *Pisuna*), sending him to his maternal relations (acc. to *Kaunapadanta*), making the prince addicted to sensual pleasures (acc. to *Vatavyādhi*), proper pre-natal care and proper education after birth about dharma and restraint (acc. to *Kaut.*). This symposium shows how the problem of the king's safety against bad princes taxed the ingenuity of all ancient writers on *Arthasāstra* and how *Kautilya* advocated the only reasonable course possible. The *Matsyapurāṇa*, chap. 220, also relies on training, discipline and gradual transfer of responsibility and advises the imprisonment of a bad prince in a well-guarded place furnished with comforts suitable to his

^{115b}. अनेनेन विधानेन कुर्याद्दण्डाने सदा । अभिवेकाद्वि दग्धेन विसंवासेन तदा ॥
Matsyapurāṇa quoted in *Rajadharmaśāstra* p. 10.

position¹¹⁴. In I. 20 Kautilya gives practical hints against the danger of fire and poisons: e.g. he says that poisonous snakes will not enter a building provided with Jivanti, Sveta and other plants; that cats, peacocks, mongoose and spotted deer when let loose eat serpents, that certain birds like parrots, *nainas*, malbar bird shriek when they suspect snake poison, the heron loses his consciousness in the vicinity of poison; the pheasant (*jivā-jivaka*) feels exhausted; the young cuckoo dies; the eyes of *akora* become redder¹¹⁵. Kām. (VII. 10-13) repeats the words of Kaut. I. 20 and the Matsya (219, 17-22) refers to the effects of poison on the same birds and a few others. The Matsyapurāṇa in chap. 219-220 closely follows Kaut. and Kām. and appears to be based on them (e.g. Matsya 219, 30 latter half is the same as Kām. VII. 24 first half). Vide Yasaśīlaka III. pp. 511-512 for the effects of poison on birds almost in the same words as those of Kaut. and Kām. Vide Śukra I. 326-328. Kaut. I. 21, Kām. VII. 15-26, Matsya 219, 9-32 state that part of the food for the king should first be cast into fire and offered to birds and the effects noted, they dwell at great length on the different tints of the flames of fire and of the smoke when different kinds of food are cast into fire, they point out the actions and gestures of the poisoner, they prescribe that the cook and the doctor giving medicines for mixing in food as antidotes should be made to partake of the food and then the king should himself partake of it. The king has to be careful in the harem, when receiving presents or anything sent by others, when sitting in a conveyance or riding a horse or travelling in a boat or when attending festivals (Kaut. I. 20-21, Kām. VII. 28-47). Kaut. I. 20 and Kām. (VII. 44 and 50) advise the king not to trust women and even the queen and to approach even the queen after she has been examined by men 80 years old and women over 50

114. सुवाधानमशक्यं तु परम कर्तुं स्वभावतः । वन्धनं तस्य कर्तव्यं सुप्तदेशे सुखा-
मिवम् । अविनीतकुमारं हि कुलमाशु निशंयेते ॥ अधिकारेषु सर्वेषु विनीतं विनियोजयेत् ।
आसीत् स्वल्पे ततः पश्चात्क्रमेणाथ महत्स्वपि ॥ मत्स्य 219, 5-7. Compare कामन्दक VII. 2-6
राजकुमारो मदीयद्वारा मया दत्त निरङ्कुशः । शत्रवं वापि निघ्नन्ति पितरं वापि नानिमिः ॥ ...
विनयोपश्रयान् धुर्यैः कुर्वीत स्वपतिः सुवान् । अविनीतकुमारं हि कुलमाशु विनश्यति ॥
विनीतमीर्यते इत्थं योवराग्रेभिर्वचयेत् । इत्थं राजमिन्द्रवृत्तं कुर्वीत सुखवन्धनम् ॥ Vide also
अग्निपुराण 225, 3-4 for similar provisions.

115. विनश्यते in कामन्दक VII. 12 is explained by the com. as
रामरहिते भयतः.

years in the harem and found¹¹⁶ safe. Kaut. (I. 20) and Kām. (VII. 51-54) both name seven kings that met death in their queen's chambers by the stratagems of the queens themselves or those that were incited by them; viz. Bhadrasena killed by his brother concealed in the chamber of his queen (who was in love with the king's brother), the king of Karuṣa killed by his own son who had concealed himself under the bed of the queen (who was angered by the king's promise to give the kingdom to the son of a rival queen), the king of Kāśi killed by his queen who mixed fried rice with poison pretending that it was honey; the queen of the king of Sauvira killed him with a jewel in her girdle that was smeared with poison; Vairantya was killed by his queen with her anklet smeared with poison; Jalātha (or Jaruṣa in Kām.) was killed with a mirror (with a razor-like edge) covered with poison; Vidūratha was killed by his queen who had concealed a weapon in her braided hair. The Harsacarita (VI) of Bāṇa mentions with additional details the cases of Bhadrasena king of Kalinga killed by his brother Virasena, the king of Karuṣa (Dadhra by name), Kāśirāja (named Mahāsena) whose queen Suprabhā killed him to secure the kingdom to her son, Jarātha king of Ayodhyā, Vairantya named Rantideva, Vidūratha of the Vṛṣṇis killed by Bindumati, the Sauvira king Virasena killed by queen Hamsavati. In the Bhāṭṭasamhitā (77. 1-2) two of these, Vidūratha and Kāśirāja, are mentioned, but the latter is said to have been killed by his estranged queen with an anklet smeared with poison. Medhātithi on Manu VII. 153 quotes four of these seven. The Nītivākyaṃṛta (rājaraṁśa-muḍḍesa 35-36, pp. 231-232) sets out six other examples of kings killed by their queens. The king has also to beware of treachery from ministers and officials. Kaut. (in I. 10) describes how ancient writers devised methods of ascertaining the purity or impurity of ministers by putting before them allurements regarding dharma, wealth, sexual desires and playing on their fears and gives it as his own opinion that temptations that have direct reference to the king or queen should not be placed in the way of the ministers. In the Harsacarita VI, Skanda-

116. अन्तर्दृश्यतः स्वचिरजीपरिच्छिन्नां देवीं पश्येत् । ... आशीलिकाः दुरुषाः पञ्चाशत्काः क्षिप्रं वा मातृपितृव्यजनाः स्वचिरवर्चसाम्भारिणाश्चावरोधानां शीघ्राशौचं विधुः । कीदृश्य I. 20; आशीलिकाश्च दुरुषाः पञ्चाशत्काश्च योषितः । दुष्प्रेक्ष्यवरोधानां शीघ्रनामनिकाश्च ये न हि देवोद्भूतं वन्देदानीमसन्निवेशनात् । अथर्ववृत्तमीषिदं विद्वान् शीघ्रं न वनेत् ॥ काम. VII. 44 and 50. Dr. Sham Sastri's translation (p. 46) of Kaṇḍīya 'eighty men and fifty women' is not correct.

gupta, the commander of the elephant arm of Harṣa's army, warns the Emperor against putting trust in everybody and gives 19 instances of kings that met misfortunes, death or destruction through their own carelessness and the stratagems of those about them (apart from the seven mentioned above and two more who fell victims to the wiles of their queens). Some of them are famous and deserve mention here, viz. the king of Vatsa (i. e. Udayana) who was imprisoned by the soldiers of Mahāsena that jumped out of a faked elephant; Maurya Brhadratha killed by his Senāpati Puṣyamitra (called 'anārya' by Bāṇa on account of his treachery to his master); Kakavarṇa Śaiśunāri (Śaiśunāgi?), Sumitra, son of Agnimitra, whose head was cut off by Mitradeva while the king fond of dancing was in the midst of actors; the Śunga Devabhūti killed by his minister Vasudeva; Candragupta (of the Gupta dynasty) who dressed as a charming woman cut off the king of Śakas; the foolish Maukhari king Ksatraparman killed by bards. Vide Kāmasūtra V. 5.30 for two other examples of the Ābhira king Kottarāja and Jayatsena king of Kāśi. The Nītivākyaṁṛta (Dūtasamuddesa) p. 171 states that Cāṇakya killed one of the Nandas through a *dūta* and that two other kings met death from presents of poisoned clothes and a jewelled box containing snake poison. The Yaśastilakacampū (III. pp. 431-432) sets out many instances of kings that met with death from the wrath or the machinations of their ministers, purohita &c.

From these examples one should not draw the facile and sweeping conclusion that in India the life of no king was safe. In the vast continent of India there were always numerous kingdoms at the same time. It is no wonder that in the course of several thousand years and over such vast territories, some kings met death by treachery and stratagem. This is not a phenomenon restricted to India. In a small country like England we have within two hundred years instances of the murder of the boy king Edward V and his brother prince Richard, of Lady Jane Grey nominated by Edward VI as his successor and the further fact that Cromwell during the last few months of his life was afraid of being assassinated. During about 150 years from 1789 out of 30 Presidents of the U. S. A. several such as Lincoln, Garfield and McKinley met death at the hands of assassins.

The truth is that in a monarchy the king was the pivot of the whole State. As the Matsyapurāṇa (219.34) finely puts it

'the king was the root and the subjects were the tree; in saving the king from dangers the whole kingdom was on the road to prosperity and therefore all were to make efforts to guard the king'.

Hereditary monarchy was the norm of government in ancient and medieval India. Kautilya expressly states (I. 17 at end) that the practice to make the eldest son the king is honoured except in the case of a calamity. At or about the time of Buddha and a few centuries thereafter there were a few oligarchies or (as some scholars prefer to call them) republics. But our Dharmaśāstra or Arthaśāstra authorities contain rather very meagre references to them. The Mahābhārata in Śānti 107 furnishes the following data about *ganarājyas* (government by groups): Internal dissensions are the root of the ruin of *ganas*; it is very difficult to keep lines of policy secret when there are many (when the government is that of many, i. e. an oligarchy or a republic); all members of the *gana* in their entirety do not deserve to hear the line of policy decided upon, but the chief persons among the *ganas* should meet together and arrange among themselves to secure the welfare of the whole *gana*; if disputes that arise among the families (or clans) are connived at by the heads of the clan, the ruin of the clan takes place which leads on to dissensions among the whole group (*gana*). Danger from internal dissensions must be guarded against (in the case of *ganarājya*), external dangers are not serious (in the case of *ganarājya*). All members of the *gana* are equal by birth and family, but they are not equal in energy, intelligence, bodily appearance and wealth. By their enemies *ganas* are broken by means of internal dissensions and bribes; therefore the greatest safety of *ganas* lies in union¹¹⁷. In these words the author of the Mahābhārata unerringly puts his finger on the weak spots of the rule of many viz. secrecy cannot be kept, there is corruption due to greed and jealousy, which bring about their downfall. In another place (Śānti 81) the Mahābhārata

117. मेदमुलो विनाशो हि गणानामुपलक्ष्ये । मन्त्रसेवर्षेण कुक्षं बहुनामिति मे मतिः ॥
8 ... न गणाः कुलमशो मन्त्रं श्रोतुमर्हन्ति भारत । गणमुकुपेस्तु संसृज्य कावे गणक्षिते विप्रः ।
25 ... कुलेषु कलहा जगताः कुलहृद्वैरपेक्षिताः । गोपस्य नाशं कुर्वन्ति गणमेदस्य कारकम् ।
आम्यन्तरमर्षं स्वयमसारं वाह्यतो मयम् ॥ ... ज्ञाप्या च संज्ञाः सर्वे कुलेन सद्यस्तथा । न
चोद्येभिन बुद्ध्या वा स्वदृष्टेण वा दूमा । मेदाच्चैव यद्वानाज्ञं निघ्नते तिरुमिर्षणाः ।
तस्मात्संघातेनाहुर्मणानां शरणं महत् ॥ ज्ञानि 107. 27-32. मेदादिनाशः सद्यःपानां
सङ्घसुखपीति केशव । यथा त्वां माप्य मोक्षदेवद्वयं सद्यस्तथा कुप ॥ नाप्यत्र बुद्धिभ्रान्तिर्यदा
नाम्यवेन्द्रियनिग्रहात् ॥ नाप्यत्र यमसंस्वासाद्वयः प्राज्ञेऽवतिष्ठते ॥ ज्ञानि 81. 25-26.

refers to the *saṅgha* of the *Vṛsnis*, of whom Kṛṣṇa was the president, and the great truth that the ruin of *saṅghas* is brought about by internal dissensions and corruption and it hits off the qualities required in the wise leader of the *saṅgha* to be four viz. sagacity, forbearance, self-control and giving up the acquisitive spirit. The words *saṅgha* and *gana* are employed as synonyms in the Mahābhārata. Pāṇini (III. 3.86) states that *saṅgha* means *gana*. Patañjali in his Mahābhāṣya (vol. II. p. 356) states that *saṅgha*, *saṁūha* and *saṁudāya* mean the same thing. Pāṇini knows two kinds of *saṅghas* viz. *āyudhajīvin* (who practised the profession of arms) and those that were not so and further he also indicates that in the Vālika country *saṅghas* included¹¹⁸ *brāhmaṇas*, *kṣatriyas* and others (vide V. 3. 114). He names the *saṅghas* of *Vṛkas*, *Trigartas*, *Yaudheyas*, *Parśus* (V. 3.115-117) as *āyudhajīvin*. Kātyāyana by his *vārtika* 'kṣatriyādekarājāt saṅghapratishedhārtham' on Pāṇini IV. 1.168 shows that *saṅgha* was differentiated from monarchy. Acc. to Kautilya (p. 53 above) the *saṅgha* of the *Vṛsnis* perished when it came in conflict with *Dvaipayana*. In another place Kautilya says that (in some cases) the kingdom may be ruled by a clan, for the confederacy¹¹⁹ of a clan is invincible, it is free from the calamity of a kingless State and therefore exists on the earth very long. Kautilya devotes one section (*Adhikarana XI*) to the dealings of the ambitious king with *saṅghas*. There he states that securing the *saṅgha* on one's side is far better than securing an army or allies and makes the most interesting remark¹²⁰ that the corporation of the *kṣatriyas* and others in

118. In the Karna-parva the country of Vālika is severely condemned and it is said to be the country between the Indus and the five rivers of the Panjab (chap. 44. 7) पञ्चानां सिन्धुवहनां नदीनां देवतप्रभितः । तत्र यमपाद्यान-क्षुधीन्वाहकानपि वर्जयेत् ॥. In chap. 44, 10 it is stated that their chief city is Śākala and in verses 11-30 and 35-38 their condemned practices are set out, and verses 31-34 say that the country of the five rivers is called Āraṇṇa and Vālika. In Karna-parva 45. 6-13 the interesting fact is mentioned that in that country only one brother in a family acts as a *brāhmaṇa* should and that their sons do not inherit but their sister's sons take the inheritance. Vide 'Indian Culture' vol. VI. 129-136 and vol. VIII. p. 85 ff for information on 'Vālika'.

119. अन्यत्रापि तेनैव ज्येष्ठभागी तु दृश्यते । कुलस्य वा भवेद्यत्र कुलसङ्घो हि दुर्जयः । अराज्यसमायासः शब्ददायक इति सिद्धिः ॥ कौटिल्य I. 17.

120. सङ्घगतानो दुष्टमित्रानामासुजनः । ... काम्योजसुरादृष्टप्रियभोग्यादयो राजाप्रसोपजीविनः । दिष्टिदिकद्विजिकमङ्गकमङ्गकुङ्कुर-कुङ्कुराजालादयो राजसङ्घोपजीविनः । कौटिल्य XI. 1 । विशेषतश्च सङ्घानां सङ्घपतिनो राजकुलानां यूनानिचो भेदः, तन्निमित्तो विनाश इति । कौटिल्य VIII. 3.

Hypheasid or Beas. The Greek writers describing the invasion of Alexander speak of the democracies of the Oxydrakai (Ksudrakas), Mallol (the Mālavas), the Siboi (Sibis), Sambastai (the Ambasthas) and several others. Vide K. P. Jayswal's 'Hindu Polity' part I chap. VIII (pp. 63-79) for Hindu Republics mentioned in Greek writings. Rhys Davids in 'Buddhist India' pp. 19 ff. summarizes the data about Indian republics derived from Buddhist works. On p. 22 he gives the names of eleven republican clans with their capitals, some of which like the Śākya (of Kapilavastu), the Mallas (of Kusināra and Pavā), the Videhas (of Mithilā) and Licchavis (of Vesālī) are well-known. Rhys Davids states (p. 19) that the administrative and judicial business of the Śākya was carried on in a moot-hall (saṅghagāra) at Kapilavastu, that a single chief was chosen (but how and for what period is not known) who presided over the sessions and (when no sessions were being held) also over the State, that he bore the title of *rājā*. He mentions that at one time Buddha's cousin Bhaddiya was *rājā* and that in another passage Buddha's father Suddhodana is styled *rājā*. He further points out (p. 26) that the Vajjians had eight confederate clans of which the Licchavis and the Videhas were the most important. K. P. Jayswal in 'Hindu Polity' part I pp. 25-165 brings together all the data about Hindu oligarchies (or republics as he calls them) and his work deserves the serious attention of all those who are interested in the study of ancient Indian political institutions, though here and there one cannot approve of his interpretations and theories. To take only one example, he holds that the procedure prescribed by Buddha for the deliberations of the *saṅgha* in the Mahāparinibbāna-sutta was borrowed from the procedure followed by the republics in their deliberations and therefore he describes the procedure of the Buddhist *saṅgha* in great detail ('Hindu Polity,' part I chap. XI pp. 103-117). Dr. D. R. Bhandarkar also (in 'Some Aspects of Ancient Hindu Polity' pp. 121-125) adopts this theory. This to say the least is a gratuitous assumption. The mere fact that Buddha told the prime minister of Ajātasatru, king of Magadha, who contemplated attacking the Vajjian confederacy, that the latter would not decline but prosper as long as they observed seven conditions and the fact that those very seven conditions were prescribed by the Buddha for the welfare of the *saṅgha* do not lead on to the further inference that the procedure followed by the monks in the deliberations of the meeting of the *saṅgha* (which is set out in such passages as the Mahāvagga IX. 3, S.B.E.

vol. XVII p. 264 ff, Cullavagga IV. 9, S. B. E. vol. XX pp. 24-27) was the procedure of the meetings of the oligarchies. The seven conditions (both for the welfare of the Vajjians and the Saṅgha) are set out in the Mahāparinibbāna-sutta, chap. I (S. B. E. vol. XI pp. 3-8) viz. holding full and frequent public assemblies, meeting together in concord and carrying out undertakings in concord, enacting nothing not already established and abrogating nothing that has been already enacted and acting in accordance with ancient institutions established in former days, honouring and revering and supporting elders and hearkening to their words, not detaining women or girls of their clans by force or abduction, honouring and supporting Vajjian shrines in town or country and not allowing proper offerings and rites to fall into dereliction, protecting and supporting the Arāhats among them. On the most important points in connection with a republic or oligarchy we have no information at all, viz. who were entitled to vote, what were the qualifications for membership of the assembly that governed the State, how voting took place, what was the period for which members of the assembly were elected, whether the president was elected for life or a shorter period or was elected at all, what were the powers and procedure of the assembly. Vide Dr. Beni Prasad in 'Hindu Political Theories' p. 158 for criticisms. Rhys Davids (in 'Buddhist India' p. 41) says that according to the Jātakas there were at Vesālī (modern Basadh in the Muzaffarpur District), the capital of the Licchavis, 7707 *rājās* (or chiefs). In the Bhaddasāla-jātaka (Fausböll, vol. IV p. 148) there is a reference to a tank reserved for the bath of the families of the ruling chiefs (*rājās*) of the *gaṇa* in the city of Vesālī. In the Mahāvastu (ed. by Senart vol. I p. 271) it is stated that there were twice eighty-four thousand nobles (*rājās*) among the Licchavis. This explains what Kauṭilya means by '*rājasabdopajivinaḥ*'. These people called '*rājās*' were probably the scions of the several branches of the Licchavis, who had in their hands the government and who were not doing manual (or agricultural) work. Vide Government Epigraphic Report for 1899 p. 23 and Indian Historical Quarterly vol. IV p. 652, where it is said that in an inscription from Uttaramallur the extent of land and of Vedic learning required in a candidate for election are specified as also the method of writing on tickets the names of candidates. But such records, even in South India, are very few and refer to village *sabhās* and there is nothing in the works on dharmaśāstra or arthaśāstra about the methods of

the countries of Kāmbhoja and Surāstra practise *cātrā* (husbandry and trade) and the profession of arms, while those of the Licchivikas, Vṛjikas, Mallakas, Madrakas, Kukuras, Kurus and Pālicālas live on the title of *rājan* applied to them (i.e. they are not cultivators of the soil and soldiers, but are only chiefs or nobles). What Kautīlya means by '*vārtā-śāstropajivinaḥ*' appears to be that they were agriculturists ordinarily but were ready with their swords to defend their country when occasion required. Kautīlya then describes in detail without any scruples how the conqueror may by various subterfuges cause dissensions among the members of the saṅgha and its leader or leaders (*saṅgha-mukhya*). In VIII 3 Kautīlya remarks that dissension becomes particularly rife owing to gambling among saṅghas and noble clans that have the saṅgha constitution and they are destroyed. From about the 5th or 6th century A. D. the oligarchic States or Republics became rare and gradually disappeared. We get further data about these gaṇarājyas from Buddhist works, Greek sources (like the fragments of Megasthenes), coins and inscriptions. Rudradāman (in Junāgaḍh Inscription of 150 A. D.) boasts that he had uprooted the Yaudheyas who had become puffed up and unbending on account of the title of heroes (*vīra*) that was prominently applied to them among all ksatriyas¹²¹ (E. I. vol. VIII. at p. 44). Samudragupta (in the first half of the 4th century A. D.) subjugated the Yaudheyas, Mālavas, Ārjunāyanas &c. In Gupta Inscriptions No. 58 p. 251 there is mention of a *mahārāja-mahāśenāpati* who was made their leader by the Yaudheya-gaṇa. The *Bṛhatsaṃhitā* in several places refers to the Yaudheyas and Ārjunāyanas (e.g. 4.25; 5.40, 67, 75; 14.25 and 28; 16.21; 17.19) and speaks of Yaudheya-nṛpa in 9.11. Vide Rapson's 'Indian coins' pp. 11 and 15 and Plate II, nos. 13-15 and Plate III, no. 20 for the coins of the Yaudheyas and Ārjunāyanas. Arrian writes in 'Indika' (tr. by MacCrindle IX. p. 208, ed. of 1926) 'from Dionysus to Sandrakottos the Indians counted 153 kings and a period of 6042 years, but among them a republic was thrice established'. MacCrindle's 'Invasion of India' (p. 121) speaks of an aristocratic government on the

121. सर्वज्ञाविष्णुवीरराज्यद्रावोत्सेवाविधेयानां पौधेयानां प्रमहोरत्नाद्वेन। E. I. VIII. at p. 44; वीरिपगजपुरस्तुतय महाराजमहासेनापते; &c. in Gupta Inscriptions pp. 251-252. Vide Quarterly Journal of the Mythic Society of India (Silver Jubilee number) p. 114 for Yaudheyas, and J. B. O. R. S. vol. 23 p. 146.

election to political assemblies and the qualifications of candidates. Vide Dr. D. R. Bhandarkar's 'Some aspects of Ancient Hindu Polity' (1929) pp. 101-121 for a concise statement of several types of republics in Ancient India.

Another important question is whether in monarchical states there were popular assemblies of elected representatives or, in modern language, Parliaments. The words 'sabhā' and 'samiti' require consideration in this connection. In Rg. I. 91.20 Soma is said to confer a son who is *sālanya*, *vidathya* and *sabheya*, from which it follows that *sabhā* is in some respects different from 'vidatha'. In Rg. II. 24. 13 a *vipra* (a priest or composer of hymns) is said to be *sabheya* 'clever or eminent in a *sabhā*'. In Rg. X. 34. 6 'sabhā'¹²² appears to mean a gambling hall. In Vāj. S. XXX. 6 *sabhācra* seems to mean only 'sabbhācra', a member of a judicial tribunal, while in XXX. 18 the *sabhāsthāna* is given up to Ārkanda in the symbolic Puruṣamedha. In the Vāj. S. XVI. 24 there is an obeisance to *sabhās* and *sabhāpatis* (presidents of *sabhās*). In Atharvaveda VII. 12. 1 'sabhā' and 'samiti' are said to be the two daughters of Prajāpati, from which it may be argued that they were very similar but somewhat different. In Atharvaveda XV. 9. 2 also *sabhā* and *samiti* are separately mentioned. In Tai. Br. III. 7.4 the word *sabhāpāla* occurs and *sabhā* is explained as 'gambling-hall' by Śaṅkara. In Rg. X. 97. 6 and Vāj. S. XII. 80 it is said that *vipra* is said to be a doctor (*bhisak*) in whom medicinal herbs come together as nobles (*rājānah*) in a *samiti* (meeting or battle). In Rg. X. 191. 3 the word 'samiti' seems to mean no more than a meeting or meeting place. In Atharvaveda V. 19.15¹²³ we have 'the assembly (*samiti*) does not suit him (or is not won over by him) who harasses a brāhmaṇa'. In the Chāndogya Up. (V. 3. 1) Śvetaketu is said to have repaired to the assembly (*samiti*) of the Pāñcāla country, where the king Pravāhana Jaivali asked him five questions which the former could not answer and then he approached the next morning the king who was in his *sabhā*. Here it seems that both words are applied to the same assembly. It is impossible to say how the *sabhā* or *samiti* was constituted in the Vedic period. All that we can say is that it was an assembly of people to which the king, learned men and others went. It is extremely doubtful whether it was an elective body. Probably it was an *ad hoc* assembly of such people as cared to

122. सभमेति क्रियः पृच्छमानो जेषामीति तस्या सुश्रुतानः । क. X. 34. 6.

123. न वर्यं नैवावर्यं ब्रह्मण्यमभिवर्षति । वार्यं समितिः कल्पते न मित्रं वयते पञ्चम् । अथर्व V. 19. 15.

be present. K. P. Jayaswal (in 'Hindu Polity' part I p. 11) holds that 'saṁiti' in the vedic age was the national assembly of the whole people, that it was the king's duty to attend it (*ibid.* p. 12) and that 'sabha' was the standing and stationary body of selected men working under the authority of the saṁiti (*ibid.* p. 18). This is all conjectural, as Jayaswal himself admits 'the *sabhā* was certainly related to the *saṁiti*, but its exact relationship is not deducible from the data available' (*ibid.* p. 18).

These frantic efforts by such scholars as Jayaswal to prove that India had elective assemblies are made to counteract the sinister propaganda of many English writers that East is East and West is West and that the democratic institutions of the West cannot be transplanted with success on the soil of India. This is mischievous propaganda. There were no democracies even in Europe a few hundred years ago; even in England, France and a few other countries democracies have been introduced and have thrived within a short time. There is no reason why they should not do so in India, if honest efforts are made and difficulties are not purposely created by vested interests. Korkunov in 'General theory of law' (tr. by Hastings, 1922, New York p. 296) says 'According to the historical school the political organization of England is good for England alone, for it corresponds to a natural genius very peculiar.... This doctrine of the historical school is false, since we have already seen that a change produced in the social ideal may bring about a change in the whole social development. The influence of one people on the life of another is a proof of this. The ideal is a force supporting the social life and this ideal may be the result not merely of our own special experience, but also of the experience of neighbouring peoples'.

Two other words require consideration, viz. *Paura* and *Jānapada*. The word 'paura' occurs in Rg. V. 74. 4 where it has three applications, viz. to the *Asvins*, to the sage Paura (who was an *Ātreya*) and to the cloud (acc. to *Sāyana*). K. P. Jayaswal (in 'Hindu Polity', part II pp. 60-108) devotes considerable space to 'Paura' and 'Jānapada' and one may at once admit that he displays great learning, industry and ingenuity in his discourse on this subject. He holds that the Paura and the Jānapada were elective parliamentary bodies or what may be called the Hindu Diet and he sums up (on p. 108) their functions as follows 'we had an organism or a twin

organism, the Paura-Jānapada, which could depose the king, who nominated the successor to the throne..., whose President was apprized by the king of the policy of state decided upon in the council of ministers, who were approached and begged by the king in all humility for a new tax, whose confidence in a minister was regarded as an essential qualification for his appointment as Chancellor, who demanded and got industrial, commercial and financial privileges for the country, who could enact statutes even hostile to the king, in fine who could make possible or impossible the administration of the king. This is a very glowing picture of parliamentary institutions in ancient India. But unfortunately it cannot be accepted as the truth. Many scholars such as Prof. B. K. Sarkar (in 'Political Institutions and theories of the Hindus' p. 71) and Dr. Beni Prasad (in 'The State in ancient India' pp. 498-500) do not subscribe to this theory. For want of space detailed examination of Jayaswal's theory cannot be entered upon. But a few remarks must be made. The sheet anchor of his theory (in 'Hindu Polity' part II. p. 68) is a passage in the Hathigumpha Inscription of Kharvela (E. I. vol. XX at p. 79 ll. 6-7) which runs 'Rajasūyam sandassayamto sava-kara-vapam amgaha-anekāni sataśahasāni visajati poram jānapadam' and which he himself translates (at p. 78) as 'remitte all tithes and cesses, bestows many privileges amounting to hundreds of thousands on the paura and jānapada'. Jayaswal himself has changed his views about the interpretation of this difficult record so many times (e. g. J. B. O. R. S. vol. III pp. 425-507 may be compared with his interpretations in E. I. vol. XX p. 71) that one can never feel sure even of his latest readings and translations. As a matter of fact Dr. Barua differs and reads 'pora-jānapadam' as one word (I. H. Q. vol. 14 p. 464) and does not accept Jayaswal's interpretation (p. 477). If the word is 'pora-jānapadam' it would simply be a *śamāhāra-śanda* compound and mean 'all inhabitants of the capital and the rural inhabitants' and the singular need not necessarily lead to the inference that a parliament of city-dwellers and rural population is meant. Even supposing that the correct reading is 'poram-jānapadam', that would not matter much. We shall have to understand the word 'janam' after it, since the word 'jana' is often employed after 'paurajānapada' e. g. in the 8th Rock Edict at Girnar 'janapadasa ea janasa dasanam' C. I. I. vol. I. pp. 14-15, in Rudradāman's inscription in E. I. vol. VIII p. 44 'apidayitva paṇḍra-jānapadam janam' and 'paurajānapada-janānugrahārtham'.

at p. 45 or in the Rāmāyaṇa II. 2. 51, II. 111. 19 'paurajānapadam janam'). Lastly if the paurajānapada organization had (as said by Jayaswal in the quotation cited above) the power to depose kings and pass even hostile statutes, is it not a contradiction in terms to say that, instead of the Parliament or Diet deciding to remit certain taxes, it was the king who remitted taxes and bestowed favours (or privileges) of lakhs of rupees on the supposedly all powerful Paura-Jānapada assembly? In all passages that he quotes from the Rāmāyaṇa and other classical sanskrit works the ordinary meaning of *paura* (residents of the capital) and *jānapada* (inhabitants of the country other than the capital) is quite enough and it is impossible to hold that any elective body is meant. In most passages the plural 'paurajānapadān' is used. If 'Paura-jānapada' stands for one elective body or two bodies, no explanation is offered why the plural should generally be used and not the dual. Kautīlya (I. 19) states that the king should in the 2nd part of the day (divided into eight parts) look into the causes of the paurajānapadas. Jayaswal (in 'Hindu Polity', part II p. 95) misinterprets this passage by saying that the king had to set apart one period daily for the business of the paurajānapada assembly. Here again the plural is used and the dictum of Kautīlya is the same as that of Yāj. I. 327 who says that the king should look into the law-suits (vyavahāraṇ) of the people. The word 'kārya' is employed by Manu VIII. 43, Nārada and other writers on vyavahāra in the sense of 'law-suit'. Yāj. II. 36 says that the king should restore to the jānapada property stolen by thieves. Jayaswal (in 'Hindu Polity', part II p. 93) presses the singular 'jānapadaya' into his service and holds that it was the popular assembly that demanded the restoration of the things stolen. This, to say the least, is twisting the plain words of Yāj. The Mit. paraphrases the word to mean 'to the person dwelling in his country from whom the property was stolen'. The corresponding passage of Manu VIII. 40 (dātavyam sarva-varṇebhyo rājā corair-ḥṛtam dhanam) is quite clear, since it fortunately does not use the word jānapada and Medhātithi explains it as 'it should be restored to those from whom it was stolen'. Jayaswal (in 'Hindu Polity' part II p. 79) holds that a passage in the Arthashastra (II. 14) refers to the fact that the Paura-Jānapada assembly got gold coins minted by the royal mint-master.¹²⁴

124. सौवर्णिकः पौरजानपदानां स्वयमुत्कर्षनावेशमितिः कारयेत् । निर्दिष्टकालकार्यं च कर्म कुर्वुः । अर्थशास्त्र II. 14.

But the plain meaning is that the mint-master was to mint standard silver and gold coins for all people when they brought bullion to him to have coins struck. One striking circumstance to be considered is that, though in all works on polity a *raṣṭra* is said to have seven elements, none of them includes a political elective assembly (like the *paura-jānapada* postulated by Jayaswal) among them. They only enumerate the country and the capital and declare even these as of lesser importance than the king and the ministers. Another matter that makes the existence of powerful elective political assemblies in monarchies most unlikely is the total absence of any reference in works on polity to the method of election, the system of voting, the qualification of members, the period for which the assembly was elected and allied matters. When medieval writers like Aparārka on Yāj. II. 1 (p. 600) quote from Bṛhaspati verses about four kinds of *sabhā*, they refer only to judicial tribunals of various sorts and grades (the same verses are quoted as Hārta's in Rājantī-ratnākara p. 20). Vide n. 368 below.

If elective popular assemblies did not exist, then it may be asked whether the king was an absolute monarch or a despot or whether there were any checks that mitigated or regulated the power and doings of monarchs. The answer is that there were such checks and limitations. These were of various kinds. Exhortations addressed to the king himself exercised a restraining influence. For example, Kat. (10) says 'the king who gives way to wrath without proper thought would reside in a horrible hell for half a Kalpa'. The importance of dharma as an all-embracing institution was impressed upon the king by our writers so frequently that it must have had its psychological effect on every king. The idea that *daṇḍa* personified as a Daity might strike down the bad king himself (Manu VII 19, 27, 28, 30, Yāj. I. 354-356) would tend to keep even a whimsical king within bounds. The views of ancient writers have already been cited according to which the king was not to act as he pleased, but was to regard his high office as a sacred trust and was to rule according to the dictates of the *sāstras*. These views created public opinion which must have certainly influenced the king's acts. The ideal king Rāma is depicted as having abandoned his queen Sītā (whom he knew to be pure) because the people could not accept her as pure after her long stay in Rāvana's prison. Vide Rāmāyana VII. 45. Then there were the ministers whose advice the king was enjoined to seek. Besides there was the *purohita* and there were learned *brāhmaṇas*,

who were to propound what dharma was, whose directions he was to carry out and who were supposed to have power to ruin a bad king (vide Vas. I. 39-41, Gautama XI. 12-14, Manu IX. 320). Vide H. of Dh. vol. II. pp. 138-145 for the peculiar sanctity attaching to the person of a brāhmana and the superior position of brāhmanas as a class vis-à-vis the king. There was a deep-rooted faith that the rules of the śāstras (the Śrauta and Smṛta dharma) were divinely inspired and were above the king. Observance of dharma was the great social and political ideal from very ancient times for all including the king. This is most emphatically put in the Br. Up. I. 4. 11-14, where it is stated "even after creating the four varnas He (the Creator) did not think that stability had been attained. He then created the most excellent *Dharma* which is the might of the mighty (i. e. more powerful than the warrior caste). There is nothing higher than dharma. Even a very weak man hopes to prevail over a very strong man on the strength of dharma, just as (he prevails over a wrong-doer) with the help of the king. So what is called dharma is really truth. Therefore people say about a man who declares the truth that he is declaring dharma and about one who declares what dharma is they say that he speaks the truth. These two (dharma and truth) are this" (i. e. one).¹²⁵ Kāmandaka I. 14 stated that the Yavana king ruled over the earth for a long time because he ruled according to the dictates of dharma. In his administration of justice the king was to be checked by the judge and sabhyas, who were fearlessly to render advice to the erring king (as will be shown in the section on vyavahāra). Besides corporations and guilds were powerful and had a sort of self-government. Manu (VIII. 336 and Yaj. II. 307) went so far as to prescribe a heavy fine which the king was to inflict on himself for his illegal exactions and punishments and to direct that the king should distribute among brāhmanas wealth forfeited by grave sinners (Manu IX. 243-244). Lastly there was the final sanction that the śāstras allowed the subjects to abandon a worthless king or even to kill a misguided one or tyrant, as stated above (vide Manu VII. 27-28, Arthashastra I. 4).¹²⁶

125. स नैव धर्मवत्पुत्रोऽपि स्वधर्मवद्भुजत धर्मे तदेतावन्नर्यं सर्वं यद्धर्मस्तस्माद्भर्तापदे नास्ति । अथो अमलीयावन्मलीयांसमाशंसते धर्मेण यथा राज्ञा । एवं यो वै स धर्मः । सर्वं वै तत् तस्मात्सर्वं यद्व्यवसाहृष्यते यद्वतीति धर्मं वा यद्वन् सर्वं यद्वतीत्येतद्व्यपेक्षेतुमयं भवति । बृह. उप. I. 4. 14.

126. दुष्प्रभृतिः (दुष्टाः) कामक्रोधाद्व्यामज्ज्ञाताद्यानवरथपरिज्ञाजवापि कोपयति किमपि पुनर्व्यवसायः । अर्थशास्त्र I. 4.

Kautilya (VIII 3) when dealing¹²⁷ with the evil results of want of discipline in a king states that kings who are hot-tempered are known to have fallen victims to popular fury (or the fury of ministers). We may say that in theory and so far as ordinary people were concerned the sovereign's power was absolute and unlimited as Manu IX. 9-12 aptly illustrate and as Brhat-Parāśara states 'the king is Brahmā, Śiva, Viṣṇu, Indra, he is the giver, the destroyer, and the enforcer according to the karma of his subjects'. But there were (as stated above) very real checks and limitations that effectively prevented him from exercising his undoubtedly unlimited powers. These checks, though real, cannot be called constitutional in the sense in which that word is used in modern times. As said by Nārada the subjects are dependent while the king is uncontrolled, but he could not go against the śāstra (vide Haradatta on Gaut. XI. 2).

In modern times the activities of a sovereign person are three-fold, viz. executive, judicial and legislative. The judicial activities of the ancient Indian king will be dealt with in another section on law and the administration of justice. One great difference between ancient and modern societies is that the legislative action of the king was extremely limited in ancient times, while in modern times people are more and more looking to legislation for regulating all manner of things. Manu (VII 13) lays down that since the king has in him the glory of all deities, whatever rule as regards desirable matters the king establishes and whatever action he declares as undesirable among those actions that are harmful, should not be transgressed by any one. In his gloss on this verse Medhātithi carefully points out what orders the king can issue and on what subjects he cannot issue orders. He gives the following instances of orders of both kinds: 'To-day all should observe a festival in the capital; all should attend a marriage ceremony at the house of the minister; animals should not be killed to-day by the butchers and birds should not be caught; debtors should not be harassed by creditors on these days (to be specified); no one should associate with such and such a man (an undesirable person); no one should allow a certain (undesirable) person to enter the house'. Medhātithi adds that the king is not authorised to interfere with the *śāstric* rules governing the

127. अविनीतो हि स्वसनक्षेत्रान् न पश्यति । तानुपदेशान् । कोपजास्त्रिभुवः कामज-
श्चतुर्भुवः तयोः कोपो मरीचान् सर्वत्र हि कोपश्चरति । प्रापशब्द कोपकसा राजानो पशुति-
कोपेर्दत्ताः श्रुयन्ते । अर्थशास्त्र VIII. 3.

varnas and āśramas such as the performance of agnihotra.^{117a} This gloss of Medhātithi occurs word for word in the *Rajantī-prakāśa* (pp. 23-24), which gives a more correct text than the printed editions of Mandlik and Gharpure. Kautilya (II. 10) devotes a chapter to the drawing up of *sāsana*s, particularly with reference to their linguistic elegance and diplomatic etiquette. The *Śukranītisāra* (I.312-313) prescribes that the king's edicts (*sāsana*) should be proclaimed to the subjects by beat of drum, that his edicts should be written and displayed where four roads meet, and that the king should declare that breaches of the orders would entail heavy fines. In I. 292-311 Śukra gives instances of such orders, the most important of which are: Watchmen should take rounds in the several streets every one hour and a half at night in order to prevent thieves and paramours moving about; people should not employ abuse or beating towards their slave, servant, wife, son or pupil; no one should practise deceit in respect of measures, weights, coins, resins, metals, ghee, honey, milk, fat, flour; no document should be got by force; no bribes should be taken nor should any bribes be given to persons engaged in doing the king's work; no one should offer shelter to bad characters, thieves, paramours, those who hate the king, the enemy; parents, persons worthy of honour, learned men, men of good character should not be disrespected or ridiculed; no dissensions should be sown between husband and wife, master and servant, between brothers, between teacher and pupil, between father and son; no interference or obstruction should be caused to wells, parks, boundaries, *dharmaśālās*, temples, roads or to those who are deficient in a limb; without the king's permission no one should engage in gambling, selling liquor, hunting, bearing arms, sale or purchase of cattle or elephants or horses or camels or she-buffaloes or slaves or immoveable property or silver, gold, gems, intoxicants, poisons, drugs, the profession of medicine or should pass a sale deed, deed of gift or give a decision about a debt; no one should falsely accuse another of the great sins, nor take treasure trove, nor frame new rules for clubs or convivial gatherings (*saṃāja*) nor should publish slander against a caste, nor should appropriate property which is without an owner or has been lost, nor divulge the (king's) lines of policy, nor babble about the vices of the king; the people should not

117a. न त्वग्निहोत्राद्यदस्यायै वर्णाश्रमिणां राजा प्रभवति स्मृत्कन्तरिरोधनसङ्काद-
अविरोधे आदिमन्त्र विषये न चानस्यायैवसङ्काद । मेधा- on मनु VII, 13.

even think of forsaking their dharma, speaking untruth, committing adultery with another's wife, giving false evidence or fabricating documents, accepting gifts secretly, committing thefts and engaging in other desperate acts, engaging in sedition; public servants should not exact more than the tax already settled; only such weights and measures are to be used as bear the royal stamp; all subjects should strive to possess good qualities; desperadoes should be arrested and handed over to the king; bulls let loose (in memory of the dead) should be kept well controlled and fed by those who let them loose. Medhātithi on Manu VIII. 399 states that a king may prohibit the export of foodstuffs from the kingdom in a famine. The several edicts of Aśoka show that his orders were framed on the same lines that are contained centuries later on in the Śukranitiśāra. Most of his proclamations insist on moral virtues such as truthfulness, obedience and reverence to parents, elders and preceptors, honouring brāhmanas and śramanas, kindness to animals, tolerance of other faiths. Proclamations that may be called positive laws are very few, such as his order in Pillar Edict IV to give three days' respite to criminals condemned to death (C. I. I. vol. I p. 125) or his regulations restricting the killing of animals contained in the 5th Pillar Edict (C. I. I. vol. I p. 138) or in the First Rock Edict at Girnar (p. 7) 'no living being must be killed or sacrificed and no festival meeting must be held'. In the reign of Avantivarman of Kashmir the killing of living beings was prohibited for ten years (vide *Rājatarāṅgi* V. 64). Law-making in the modern sense is almost entirely lacking in the *smṛtis*. Gaut. XI. 19-25 show¹²⁸ that the king was to find the law required for the decision of causes from the following, viz. (1) the Veda, Dharmasāstras, the Aṅgas (lores auxiliary to the Veda such as grammar, exegesis, metrics etc.), Upavedas, Purāṇas; (2) customs of countries, castes and families that were not opposed to the Veda; (3) the usages of husbandmen, traders, herdsmen, money-lenders and artizans; (4) ratiocination; (5) the opinions^{128a} delivered

128. तस्य च व्यवहारो वेदो धर्मशास्त्राण्यद्वान्युपवेदाः द्वाणाम् । देशजातिकुलधर्मा-
श्रामापरिविद्धाः प्रमाणम् । कर्षकवनिजपशुपालकुलीदिकारवः सोऽस्य धर्मः । ... न्यायाधि-
स्ये तर्कोन्युपायः । ... विप्रतिपत्तौ वैचित्र्यदृष्टेः । व्यवहारस्य निष्ठौ धर्मयुतौ तथा ह्यस्य निःश्रेयसं
भवति । नो. XI. 19-25.

128a. व्यवहारो वेदधर्मज्ञाः पर्यंतु वैचित्र्यमेव वा । सा जने सं स धर्मः स्वादेको वाधवा-
त्वविभक्तः ॥ प्र. I. 9, on which विश्वरूप remarks शास्त्रोपपाद । अतिविरोधे वैचि-
त्यमप्येषु निर्णयः इति एवावलोके शास्त्रवत्तदुक्तपुरिति च । These two show that
pariśad and traividya were more or less synonymous.

by the assembly (*paṇḍit*) of men deeply learned in the three Vedas. The authoritativeness of customs, usages and conventions and their relation to śāstra will be discussed later on. In the decision of causes there were four deciding factors, dharma, vyavahāra, caritra and rājāsāsana, which will also be dealt with later. So royal edicts or orders first came to be made in the administration of justice and probably served as laws or precedents in later times. Vide H. of Dh. vol. II, pp. 968-970 for the role of *paṇḍits* in religious matters. Yaj. I. 9 and Śāṅkha speak of *paṇḍit* or assembly of learned men as final authorities on dharma.

The executive functions of the king required a large number of ministers and officers. This topic will be dealt with immediately below.

There is another way of looking at the king's functions viz. they were religious and secular. The first required him to do certain acts for propitiating gods and unseen powers and removing dangers therefrom with the help of the purohita and sacrificial priests (vide Gaut. XI. 15-17, Yaj. I. 308) and he had to guard dharma. His secular functions included those that led to prosperity, that helped the people in famine and similar calamities, dealing even-handed justice, guarding person and property from thieves and trespassers and against invasion.

The Mahābhārata records the tradition that many kings of former times abdicated the throne in favour of their sons and resorted to the forest as hermits. Vanaparva 202.8 mentions Brhadaśva who crowned his son Kuvalāśva. Vide also Vāyu 88.32. Dhṛtarāṣṭra says to Yudhiṣṭhira that in their family it was customary for kings to transfer the sovereignty to their sons and resort to a forest towards the close of their lives (Āśramavāsi 3.38). Vyāsa says that that was the practice of all *rājārṣis* (Āśramavāsi 4.5) and the Āśramavāsi-parva (20) mentions the names of several such kings. Vide also Śānti 21.15. In Ayodhya 23.27, 94.19 this practice is referred to.¹²⁹ In the Raghuvamśa (I. 8, XVIII. 7, 9, 26) Kalidāsa says that in the family of Raghu kings in their old age became *munis* (hermits) and in chap. VIII. 11-23 he draws a fine contrast between the lives of Aja and his father Raghu (who had become a *yati*). There are Jain traditions of some antiquity that connect the

129. पूर्वराजर्षिदुष्य वि वनवासोऽभिधीयते । यत्र निक्षिप्य दुष्टेषु दुःखव्यसिपादने ॥ अयोध्या 23. 27; इदमेवामुलं ग्राह्यं राज्ञि राजर्षयः वरे । वनवासं महासायं देव से प्रणिनामहः ॥ अयोध्या 94. 19.

grest Jain sage Bhadrabāhu, the last Śrutakevalin, with Candragupta Maurya, who is said to have abdicated in favour of his son and to have gone to Śravaṇa Beṅgola. Vide Indian Antiquary, vol. 21 pp. 156 ff where Fleet criticizes this tradition and rejects it. In the Divyāvadāna (XXIX p. 431, ed. by Cowell and Neil) it is stated that Aśoka died destitute of power¹³⁰ and possessions and Fleet (in J. R. A. S. for 1913 pp. 656-658) says that there is in this probably a reminiscence of abdication by Aśoka. King Lavaprasāda of the Vāghela dynasty in Gujerat abdicated in favour of his son Viradhavala (1233-38 A. D.). Vide Bombay Gazetteer, vol. I part 1 pp. 198, 200, 206.

Kauṭilya (VIII. 2) speaks of a novel rule called 'dvairājya'¹³¹ (sovereignty of two) and distinguishes it from 'vairājya'. The Mss. differ in their readings, but the reading given in the footnote by Dr. Sham Sastri seems preferable. Kaut. remarks "As between dvairājya and vairājya (foreign rule) the former perishes on account of mutual hatred and rivalry; but the latter according to the *ūcāryas* is enjoyed by foreigners as it is, when it pays attention to winning over the subjects; 'No' says Kauṭilya 'dvairājya' (generally) exists between father and son or between two brothers, their welfare is the same and therefore by reason of the influence of *amātyas* (over the two rulers) it can last, but *vairājya* comes into existence by being seized from another king who is living and therefore the (foreign ruler) thinking 'this country is not mine' impoverishes it and carries off its wealth or treats it as a chattel (for sale) or when he finds that the country is disaffected towards him abandons it and goes away". This remarkable passage contains the mentality of foreign rulers in a nutshell. Mamu IV. 160 in a lucid and laconic manner states how individual and national happiness lies in freedom. Kālidāsa in his *Mālavikāgnimitra*¹³² (Act V) appears to refer to the conception

130. अशोक is made to say 'दाक्षिणादहृतं हि हि कथपथ ब्रह्मविराज्या सर्वं श्रेयं त्वामलकार्थमित्यवसितं च त्र पशुत्वं मम । ऐश्वर्यं धिगनापसुदुत्तनदीतीवपवेक्षणम् मर्येन्द्रस्य ममापि पत्यतिवर्षं दारिद्र्यमन्यागतम् ॥' दिग्वाचद्वान XXIX p. 431.

131. द्वैराज्यवैराज्ययोः द्वैराज्यमन्योन्यापक्षद्वैराज्यामाग्नौ परस्परसङ्घर्षेण वा विनश्यति । वैराज्यं तु प्रकृतिविच्छिन्नद्वयार्थेति यथारिधितमन्यैर्भुज्यत द्वायाच्चापः । नेति कौटिल्यः पितापुत्रपौर्त्रात्रयोः द्वैराज्यं तुल्ययोग्येणमममाप्यपक्षं वर्तयेतेति । द्वैराज्यं तु जीवतः परस्परच्छिन्नं नेतन्ममेति मन्यमानः कर्तृपत्यपक्षोपति पक्षं वा करोति विरक्तं वा वरिष्यज्यापमच्यतेति । अर्थशास्त्र VIII. 2.

132. तत्रममतांर्थावोर्गजसेनमाधवसेनयोर्द्वैराज्यमिदानीमवस्थापयितुकामोऽस्मि । तौ द्वयम्बरद्वयोरे सिंहासुनरक्षिणे । नक्तंदिने विमर्शोमी क्षीतांणकिरणविव ॥ द्विधा विमर्शो विषमद्वन्द्वो भूरं रथाश्वाविष संयोजितः । तौ स्थारपतस्ते रूपतेजिदेशे परस्परपक्षनिषिकारी ॥ मालविका V. 13-14.

of dvairājya when he makes Agnimitra say that the latter desires to establish a dvairājya for the brothers Yajñasena and Mādhavasena on the north and south banks of the river Varada, who would both remain under the command of the king (Agnimitra). In the Mahābhārata a similar rule of two brothers, Vinda and Anuvinda in Avanti, appears to be referred to (vide Udyogaparva 166, cr. ed. chap. 163). MacCrindle in 'Invasion of India by Alexander' p. 296 quotes Diodorus to the effect that Alexander sailing up the river came to Taula (Patala?) a city of great note with a political constitution drawn on the same lines as the Spartan, for in this community the command in war was vested in two hereditary kings of two different houses, while a council of elders ruled the whole State with paramount authority. Vide Jayaswal's 'Hindu Polity' part I pp. 96-97 and Dr. D. R. Bhandarkar's 'Ancient Indian Polity' p. 99-100 for some further details on dvairājya from Buddhist and other sources.

CHAPTER IV

MINISTERS

Amātya—The second of the seven elements of *rājya* is the *amātya*, which word may be translated as 'minister.' There are three words that are interchangeable though sometimes distinguished, viz. *amātya*, *saciva* and *mantrin*, the first being the oldest of the three. A *Kārikā* on Panini (IV. 2. 104) teaches the formation of the word with the affix *tyap* (*tya*) from *amā* meaning 'near or with' (vide *Mahābhāṣya*, vol. II. p. 292). In Rg. IV. 4. 1¹³³ there is the germ of this word 'O Agni! Go like a king riding an elephant, accompanied by his ministers'. Yāska (in *Nirukta* VI. 12) explains 'amavān' as 'amātyavān,' though two more explanations of the word are offered by him. The word *amātya* itself occurs in Rg. VII. 15. 3, but there it is an adjective and means 'our own' or 'abiding in our house'. In some of the *sūtras* like the *Baudhāyanaśpiti-medhasūtra* (I. 4. 13, I. 12. 7) the word *amātya* is used in the sense of 'near male relations in the house'. Vide H. Dh. vol. II. p. 588 n. 1375. The word 'amātya' occurs in the sense of minister in Āp. Dh. 8. II. 10. 25, 10 'The king should not live better or more luxuriously than his *gurus* (elders) and his ministers (*gurūn-amātyānśca nātijīvāt*)'. The word 'saciva' occurs in the *Alt. Br.* (XII. 9) where it is said that Indra considered the Maruts as his 'sacivas' (helpers or comrades). The necessity of *amātyas* or *sacivas* is stated in graphic language by several writers. Kautilya (I. 7 last verse) says 'kingship is possible only with (the aid of) assistants, a single wheel cannot work (a chariot); therefore the king should appoint ministers and listen to their opinions'. Manu (VII. 55 = *Sukra* II. 1) says 'it is difficult for a person single-handed to accomplish even an easy task; how can government particularly, which has great good as its aim, be accomplished without helpers'? The *Matsya-purāṇa* (215. 2) prescribes 'the king, while his head is still wet with the waters of coronation, if he wants to supervise his State, should choose his helpers, as in the latter the kingdom secures stability'. *Matsya* 215. 3 is the same as Manu VII. 55. Vide

133. कुलश्व पाजः पतिर्नि न पृथ्वीं पाति राजेश्वरौ हृमेन । क. IV. 4. 1; पाति राजा द्वव अमात्यपात्रं अग्रममवात् स्वपात्रं वा । निरुक्त VI. 12.

Viṣṇudharmottara II. 24. 2-3 which are the same as Matsya 215. 2-3; also Śānti 106. 11 and Rājantīprakāśa p. 174. From Arthashastra I. 7 and 8, Manu VII. 54 and 60, Kām. IV. 25, 27, XIII. 24 and 64 it appears that they use the words saciva and amātya as synonyms. Rudradāman in his Junāgadh Inscription¹³⁴ (E. I. vol. VIII. p. 36 at p. 44) states that his great enterprise to repair the Sudarsana lake was disapproved of by his advisory (matī-saciva) and executive councillors (karma-saciva) who were all endowed with the qualities required in amātyas and yet who were averse to the project and had no enthusiasm for it, since the breach to be repaired was very great. Here sacivas are divided into two sorts, those who give advice and those who execute the business decided upon and the word saciva seems to be a synonym of amātya. Amara¹³⁵ states that the amātya who is a *dhisaciva* (i. e. *matsaciva*) is called a mantrin, while amātyas other than the mantrin are called karmasacivas. These distinctions are often not observed. Sumantra is called amātya in Rāmāyana I. 7. 3 and the best of mantrins in I. 8. 4. In Ayodhya 112. 17 amātya and mantrin seem to be distinguished. From Kauṭ. I. 8 (last verse) 'Having divided the spheres of their powers and having taken into consideration the time and place and the work they have to do, all these persons should be appointed as ministers (amātyas), but not as mantrins.' It follows that mantrins were regarded by Kautilya as of a higher grade than amātyas in general. The R. N. P. p. 178 says that the amātyas are also styled mantrins. Kautilya states (I. 10) how amātyas are to be tested by *upadhā* i. e. by means of tempting them as regards each of *dharma*, *artha*, *kāma*, and *bhaya* (fear) and to be employed if found honest after any one of the four tests, while *mantrins* were to be appointed only if their integrity and loyalty were proved by all the tests combined. *Upadhā*¹³⁶ is defined by the Nītivākyaṃṛta p. 111 as 'testing the mind of a person as regards dharma, artha, kāma and bhaya by various devices' (employed by secret agents). Kāt. (4-5) quoted by R. N. P. p. 136 states that the minds of kings always go astray on the (slightest) cause by

134. अस्मिन्महो महाशत्रुपक्षे मत्तिसचिव-कर्मसचिवैरमात्यमुत्तमसुखैरतिमहत्वाजे-
द्वयप्राप्तुं साहचर्यमुत्तमैः सखाकृतारम्भम् &c. E. I. VIII. p. 36 at p. 44, l. 17

135. मन्त्री धीसचिवोऽमात्योऽन्ये कर्मसचिवास्ततः । अमरकोश II, शचिवपदम्.

136. धर्माधिकात्मनोऽप्युपधायेन पराजितपरीक्षणमुपधा । नीतिवाचस्पत्युन (मन्त्रि-
समुद्देश 14 p. 111); उपोपधीयते परमादुपधेति ततः स्मृता । उपधा उपधा ज्ञेयतः-
वामाचान्दरीकयेत् * कामन्दक IV. 27.

reason of the fact that they possess great valour, knowledge, wealth and particularly the fact that they possess absolute power; therefore brāhmapas should always enlighten the mind of the king as to the duties of a king.

About the number of members in the council of ministers there has been a great divergence of views from ancient times. Kauṭ. I. 15 and Kām. XI. 67-68 state that according to the Mānava school the council (*pariṣad*) of ministers should be constituted of twelve amātyas, acc. to the Bārhaspatyas of 16, acc. to the Ausanāsas of 20, but Kauṭīlya's own opinion was that the number is determined by the power or exigencies of the State (*yathāsāmarthyam*). The Bālakāṇḍa (7. 2-3) states that Dasaratha had eight honest and devoted amātyas (who are then named). Manu VII. 54 and Mānasollāsa (II. 2. verse 57) require that the king should select seven or eight ministers who should be hereditary, versed in the śāstras, brave, born of high family and well-tested. This advice was followed by Shivaji, the founder of the Maratha empire, who had a council of eight ministers (*Pradhānas*). Vide Rannade's 'Rise of the Maratha Power' pp. 125-126 where he describes the functions of the eight ministers called 'Mukhya-pradhāna' (Prime minister), Pant Amātya (Finance minister), Pant Sachiva (General Accountant and Auditor), Senāpati (Commander-in-chief), Mantri (in charge of king's private affairs), Sumanta (Foreign Secretary), Panditrao (in charge of the Ecclesiastical Department), Nyāyādhishta (Chief Justice). This list was probably taken by Shivaji's advisers from the Śukranitisāra II. 71-72 where almost the same eight are said to be the ministers according to some. Vide also Grant Duff's History of the Marathas, vol. I p. 193, and Rao Bahadur Wad's selections of *sanads* and letters (in Marathi) published by Messrs. Mawajee and Parasnis in 1913, where the names of the eight ministers of Shivaji are stated and their duties are described (p. 123). In the Śāntiparva (85. 7-9) it is declared that the king should have 37 sacivas, of whom 4 should be learned and bold brāhmapas, 8 valiant ksatriyas, 21 prosperous vaiśyas, 3 śūdras and one *sūta* versed in the Purāṇas, but verse 11 adds that the king should discuss and settle lines of policy in the midst of eight mantrins and Śānti 83. 47 says that mantrins should not be less than three. In the Rāmāyaṇa (II. 100. 71) Rāma whom Bharata came to meet in the former's exile asks him whether he held consultation with three or four mantrins and (in verse 18 = Sabhāparva 5. 30) Rāma hopes

that Bharata did not settle his policies by himself alone or in consultation with too many ministers. Kautilya also (I 15) lays down that the king should hold consultation with three or four mantrins. The *Nītivākyaṃṛta* (*mantrisamuddesa* pp. 127-128) holds that they should be three, five or seven, that unanimity is difficult to secure in a group of persons of different characters and that when there are many ministers they are jealous and try to carry out their own ideas. These passages show that firstly there was to be a small cabinet of three or four ministers, secondly there was to be a council (*pariṣad*) of ministers who might be eight or more in number according to requirements and thirdly there was a large number of *amātyās* or *sacīvas* (high functionaries concerned with various departments). The council is mentioned in the 3rd and 6th Rock Edicts of Aśoka (*Corpus I. I. vol. I. p. 4* 'pariṣ pi yute ajñāpayisati') in the words 'the council will order the officers called Yuktas'. The qualifications of ministers (*amātyas*) are laid down in several places e. g. in Kautilya I 9, Manu VII 54, Yaj. I 312, Kām. IV. 25-30 (of which verses 28-30 are almost the same as the words of Kautilya), Śānti 118. 2-3 (14 qualities of mantrins are mentioned), Śānti 80. 25-28, Balakāṇḍa 7. 7-14, Ayodhyakāṇḍa 100. 15, Medhātithi on Manu VII 54, Agnipurāṇa 239. 11-15 (= Kām. IV. 25 and 28-31), Mānasollāsa II 2, verses 52-59, *Nītivākyaṃṛta* p. 108, *Rājanīratnākara* pp. 13-14 (quoting Nārada and Hārīta), *Rājanītiprakāśa* pp. 174-178, *Rājadharmakauṣṭubha* pp. 251-254, *Budhabhūṣaṇa* pp. 32, 57-58. Only the qualities required by Kautilya in *amātya* are set out here: He must be a native of the country, born of high family, influential, well-trained in arts, far-sighted, wise, of good memory, vigilant, eloquent, bold, intelligent, endowed with enthusiasm and dignity, capable of endurance, pure (in mind and actions), well-disposed, firmly devoted (to the king), endowed with character, strength, health, spiritedness, free from arrogance and fickleness, affectionate, who would not have recourse to hatred (even when offended by the king). Kautilya states that *amātyas* are of three kinds, the best, middling and inferior, of which the first must be endowed in full with the qualities set out by him and the other two are deficient by one quarter and a half respectively. In Śānti 83. 35-40 the faults that disqualify a person for being a mantrin are stated and verses 41-46 set out the qualifications for a mantrin, one of which deserves special notice, viz. (verse 46) he should have secured the confidence of the *pauras* and *jānapadas*. Many works prescribe that the ministers were

to be hereditary if the son was capable like his father, e. g. Manu VII. 54, Yāj. I. 312, Rāmāyana II. 100. 26 (= Sabhāparva 5. 43), Agni. 220. 16-17, Śukra II. 114. The Matsya 215, 83-84 and Agnipurāṇa (220. 16-17) add the very sensible remark that such hereditary ministers should not be allowed to dispose of the cases of their *śāyāda* (agnates). The Viṣṇudharmottara (II. 24. 55-56) contains the same rule. This hereditary character is borne out by many inscriptions. For example, in the Allahabad stone pillar ins. of Samudragupta, Harisena is himself a Mahādanda-nāyaka whose father Dhruvabhūti was also a Mahādanda-nāyaka (Gupta Inscriptions pp. 10, 15) and in the Udayagiri cave Inscription of Candragupta II (ibid p. 34) Virasena is described as 'anvayaprāptasācivya' (who hereditarily obtained the post of *saciv*). The R. N. P. (p. 176) after quoting the Matsya-purāṇa expressly states that the hereditary principle was to be given up, if the son or grandson of a former minister had not the requisite qualifications, but that such a descendant was to be employed only in such state work as was suited to his¹³⁷ attainments. The mantrins should, according to most authorities, be chosen from among brāhmanas, ksatriyas and vaiśyas, but not from sūdras, even if the latter be endowed with qualities (vide Śukra II. 426-427, Nītivākyaṃṛta p. 108).^{137a} The consultation with the council of ministers was to be in secret. Kautīliya (I. 15) says 'All administrative undertakings must be preceded by consultation with ministers. The place for consultation should be so secluded that the conversation going on inside will not be heard outside and that even birds cannot see it, for it is narrated that secret consultations were divulged by parrots, *mainas*, dogs and other lower animals'.¹³⁸ The Harsacarita VI states that Nāgasena of the Nāga dynasty met destruction in Padmāvati because his secret policy was divulged

137. मन्त्रपुराणेति । मुण्डीनानपि तथा विज्ञाय स्वपतिः स्वयम् । कर्मस्वेव निपुञ्जीत पद्यायोग्येषु भागशः । अत्रापि वाक्यार्थः यदि मौल्यं कुलीना अपि तथा पितृपैतामहपदचोरप-मुण्डीनास्तैस्तथापि मुण्डीनानपि विज्ञाय पद्यायोग्येष्वेव कर्मसु स्वयं भागशः कर्मविभागेन निपुञ्जीत च तु तत्रापि पुराणमहपदेषु तत्र तत्र तेषामयोग्यत्वात् । रा. नी. 2. p. 176.

137a. बाह्यपञ्चादिविज्ञानेकतमं स्वदेशजमाचारामिजनविशुद्धमापसन्निभापनि-चारिणमधीताखिलपञ्चहारतन्त्रमन्त्रज्ञमशेषोपाधिभिर्द्वयं च मन्त्रिणं कुर्वीत । समस्तपञ्चांगेषु स्वदेशपञ्चांगतो महात् । नीतिशास्त्रा- p. 108.

138. मन्त्रपुराणं सचार्हम्भा । तदुद्देशः संवृतः कथानामनिर्वाची पतिभिरनालोच्य-स्वात् । श्रुते हि श्रुतसारिकाभिः मन्त्रो भिन्नः श्वभिरन्यथैव तिर्यगोनिभिः । अर्थशास्त्र I. 15 ; compare हर्षचरित VI 'नामकुलजन्मनः सपरिज्ञाश्चावितमन्त्रपर्यासीनां भागसेनस्य पञ्चांगनाम् । शुकश्रुतपरम्परया च श्रीरक्षितं सुतपरम्पराः आपस्तम्बाः ।

by a *mainū*, Śrutavarman lost his kingdom in Śrāvastī as his secret was disclosed by a parrot, and king Suvarṇacūḍa met his death in Mrttikavati by babbling in a dream about his policy. Vide also Manu VII. 147-150, Yaj. I. 344, Kām. XI. 53, 65-66, Agnipurāṇa 225. 19, Mānasollāsa II. 9, verses 700-705 p. 92. Kaut. (I. 15) has a verse 'no outsider should know the king's secret policy which he desires to carry out. Only those who are to carry it out should know it only when it is begun or accomplished'. Vide for a similar rule Manu VII. 105 (=Śānti. 140. 24 which is also the last but one verse in Kaut. I. 15).¹³⁹ The king presided in the council, but if he was not present the chief minister presided (Manu VII. 141). In the *Malavikāgnimitra* (V) the king's decision to make a *deairājya* is conveyed to the council of ministers and then the *amātya* (who here means the chief minister or President of the council) informs the king that the council agreed with the king, whereupon the king asks the council to depute the commander-in-chief Virasena to carry out the proposal. Kaut. further says (I. 15) that all business was to be transacted in the presence of the ministers; but if any one was absent his opinion was to be elicited by despatching a letter. In matters of emergency (or great danger) the king is to call his cabinet ministers and the council of ministers and what the majority decide or what would lead to success is to be carried out by the king. Śūkra I. 365 also refers to the view of the majority. It is the duty of the ministers, according to Kām. IV. 41-49, to prevent a king from pursuing an evil course, it is the duty of the king to listen to the advice of his ministers and such ministers are not merely his friends but are really his *gurus*.¹⁴⁰ Śūkra (II. 82-83) asks 'How can the kingdom be brought to prosperity by those ministers whom the king is not afraid to offend? They are no better than ladies who are to be decked with ornaments and fine clothes. What is the use of those ministers, whose advice does not tend to the advancement of the kingdom, the people, the army, the treasury, good government and to the destruction

139. मास्य छिद्रं परः पश्येच्छिद्रेषु परमान्विधात् । सुहेकुर्म इवाङ्गानि रसेद्विर-
मात्मनः ॥ शान्ति 83. 49 and शान्ति 140. 24 with slight variations; कौटिल्य
reads मास्य सुष्ठे परे विमुञ्छिद्रं विद्यात्परस्य च । ... यास्यद्विद्वत्मात्मनः ॥

140. सज्जनानमकार्येषु निदग्धुर्मन्त्रिणो ज्ञपद् । सुकृणामिव चैतेषां सुसुपादचनं
क्षपः ॥ ...क्षपस्य ते हि सुहृदस्त एव सुरसो मताः । य एवसुखयसते वारयन्वविचारिताः ॥ सज्ज-
नानमकार्येषु सुहृदो वारयन्ति ये । भव्यं ते नैव सुहृदो सुरसो सुरसो हि नैव कामन्दक
IV. 41, 44-45.

of enemies? The ministers, however, must have found it difficult to please the king and also to placate the subjects. A well-known *subhāṣita* states that one who looks to the benefit of the king comes to be hated by the people and he who looks to the good of the people (only) is abandoned by the king; when there is this great conflict it is rare to find a person who can secure the aims of both the king and the people.¹⁴⁰ Manu (VII. 56-59) prescribes the matters in which consultations are to be held with ministers and the procedure thereof, viz. peace and war, *sthāna* (i. e. army, treasury, capital and the country), sources of revenue, protection (of himself and of the country), the proper bestowal of the wealth obtained; the king is to ascertain the opinions of ministers separately and then jointly and then do what is beneficial; he is then to hold consultation on the most important affairs relating to the six means of policy with a wise *brāhmaṇa* who is the most distinguished of all ministers and always to rely upon him, to settle all lines of policy finally on his advice and then to act. Yāj. I. 312 also requires the king to consult his *mantrins*, then a *brāhmaṇa* (*purohita*) and thereafter to decide himself the course of action. The principal matters which *mantrins* have to concentrate themselves upon, acc. to Kām. XIII. 23-24 (= Agnipurāṇa 241. 16-18), are: *mantra*, securing the fruit of the line of policy adopted (such as conquering a country and protecting it), the carrying out of the business (of the State), predicting the good or evil effects (of an action taken), revenue and expenditure, government (i. e. punishing those who deserve punishment), subduing enemies, measures against calamities like famine, guarding the king and the kingdom.¹⁴¹ The Nītivākyaṃṛta (p. 185) concisely puts the same by saying that *amātyas* have to concern themselves with revenue, expenditure, guarding the ruler (i. e. his body, his dharma, wife and children), looking after the army in all its arms.

Yāj. I. 343 says 'since the State depends upon *mantra* (i. e. lines of policy arrived at after consultation with ministers), the

140a. मर्यादितकर्ता द्वेष्यतां पालि लोके जन्मपद्धितकर्ता त्यज्यते पार्थिवेन्द्रैः । इति मद्रिति विरोधे वर्तमाने समाने सुपतिजनपदानां दुर्लभः कार्यकर्ता ॥ q. by शुभ. p. 86, last pāda being read as बहुभयहितकर्ता त्यज्यते पार्थिवेन्द्रैः .

141. मन्त्रो मन्त्रफलावाप्तिः कार्यामुद्धानमाधितिः । आपादयो दुष्टनीतिरभिप्रेति-
वेधमद् ॥ यस्य सत्यं प्रकीर्तये राजराज्याभिरक्षयम् । इत्यमरस्य कर्मदे इति स मन्त्रना-
म्बितः । कामन्दक XIII. 23-24 and अग्निपुराण 241. 16-18; अपरो ध्वजः स्वामिरक्षा
सन्त्यपोषणं चामातयानामधिकारः । नीतिवाक्यावृत्त (अमरयसमुद्देशः) p. 183.

king should keep his lines of policy secret in such a way that people should not know them till the results of his undertakings manifest themselves'. Kautilya (X. 6 last verse) emphasizes the importance of mantra in 'an arrow discharged by an archer may kill one man or none at all, but a (well-considered) scheme put into operation by a wise man may destroy even those who are only conceived'.¹⁴² Both *Sabbhāparva* 5. 27 and *Ayodhyā* 100. 16 have the same verse, viz. *mantra* is the root of victory.¹⁴³ Kautilya and the *Nitivākyaṃṛta* p. 114 say that *mantra* accomplishes the following, viz. the apprehension of what is not or cannot be seen, imparting the strength of definite conclusion to what is apprehended, removal of doubt when two courses or opinions are possible, inference of an entire matter when only a part is seen.¹⁴⁴ In most works such as *Kauṭ.* I. 15, *Kām.* XI. 56, *Agnipurāṇa* 241. 4, *Pañcatantra* I. p. 85, *Mānasollāsa* (II. 9 verse 697 ff, p. 92) it is said that *mantra* has five elements which have to be considered (it is *pañcāṅga*), viz. means of carrying out actions (or works), plenty of men and materials, proper allotment of time and place, remedies against pitfalls, the (happiness of the kingdom or people) that will result from the accomplishment of the course decided upon.¹⁴⁵

The high functionaries and office-holders have been different at different times. In the Vedic age, in the performance of the *Rājasūya*, there are certain offerings (generally twelve in number) which are called 'ratnīnām havīṃsi'. Their order and names differ in different texts, though most are the same in all. Besides the king (the sacrificer), the eleven 'ratnas' (jewels) or 'ratnins' are (according to the *Sat. Br.* V. 3. 2): the commander-in-chief, the *purohita*, the crowned queen, *sūta grāmaṇi*, *ksatṛ* (chamberlain), *saṅgrahātṛ* (treasurer or charioteer?),

142. एकं हन्ताक वा हन्ताद्विदुः किलो धनुमन्ता । पाशेन तु मतिः क्षिता हन्तादुपम-
न्तानपि ॥ अर्थशास्त्र X. 6 last verse, quoted in पञ्चस्तोत्रक III. p. 386.

143. मन्त्रो विजयमूलं हि राज्ञो नयति राषयः । अयोध्या 100. 16; विजयो मन्त्र-
मूलो हि राज्ञो भवति भारत । सभा 5. 27.

144. अनुपलब्धस्य ज्ञानानुपलब्धस्य निश्चयवलापानमर्थद्वैधस्य संशयोच्छेदमेकदेश-
हस्य जेयोपलब्धिरिति मन्त्रसाधनमेतत् । तस्माद् द्विद्विद्वेः सार्धमासीत् मन्त्रम् । अर्थशास्त्र
I. 15 and नीतिशा, p. 114, which reads उपलब्धस्य निश्चयो निश्चितस्य वलापानम्.

145. कर्णनामारम्भोपायः, दुर्बुद्धसम्पत्, देशकालविभागः, विनिवातप्रतीकारः,
कार्पसिद्धिरिति पञ्चाङ्गो मन्त्रः । अर्थशास्त्र I. 15; सहायः साधनोपाया विभागे देश-
कालयोः । विपक्षेऽपि प्रतीकारो मन्त्रः पञ्चाङ्ग इत्यनेन । कामन्दक XI. 56. It will be noticed
that Kām. omits कार्पसिद्धिः and makes up the five by counting देशविभाग
and कालविभाग separately.

akṣāṇḍāpa (superintendent of gambling or of the records?), *bhāgadugha* (collector of taxes), *govikartana* (? hunter), *dūta* (courier), *parivṛkti* (discarded queen). Vide H. Dh. vol. II. p. 1215 n and 1216. In Tai. Br. (I 7. 3) they are the same as above except that *govikartana* is omitted and the queen called 'vāvata' is added. These are described in the Tai. Br. I 7. 3 as the bestowers of the kingdom (ete vai rāṣṭrasya pradātaraḥ). Vide also Tai. S. I. 8. 9 1-2. It is clear from Sat. Br. V. 3. 2. 2 and 4 that some of these jewels like the commander-in-chief and the huntsman were of low caste or of the *sūdra* caste. Later on certain functionaries began to be called *tirthas*, their number being 18; vide *Saṁhāparva* 5. 38 (= *Ayodhya* 100. 36) and *Śānti* 69. 52 for a reference to the 18 *tirthas*.¹⁴⁶ Kautilya (I. 12) speaks of the 18 *tirthas* and enumerates them.¹⁴⁷ In the *Raghuvamśa* 17.68 Kālidāsa employs the word *tirtha* in this sense. According to the *Nītivākyāmṛta* (p. 29) persons who are helpers in dharma and state business are called *tirtha*. In the Edicts of Aśoka the high officers were called *mahāmātras* (in Rock Edict XII there are *dharma-mahāmātras*) and other officers were *yuktas*, *rājukas* and *pradeśikas* (in Rock Edict III) of whom the first at least were subordinate to the council of ministers. Later writers like Govindarāja on *Ayodhya* 100. 36, the com.

146. कश्चिद्वाद्दशस्येव स्वल्पे दश पञ्च च । विभिन्नभिरविज्ञातेष्वस्ति तेषाम्नि चारकैः ॥ अथोपर 100. 36 = *सभापर्व* 5. 38 = सीतिप्रकाशिका I. 52.

147. राज्यराजा स्वविषये मन्त्रि-पुरोहित-सेनापति-पुरवराज-दौवारिकान्तर्बक्षिक-यज्ञास्तु-समाहर्तु-संनिधातु-पदेष्टुनायक-पौरस्थावहारिक-कामान्तिक-मन्त्रिपरिषदपक्ष-दण्डदुर्गमन्-पाठावधिकेभ्यु अर्द्धेयदुर्गपक्षित्य नावाभिजनापदेशान् भक्तिः सान्दर्भयोगाच्चापसर्पेत । ... एवं शत्रौ च भित्ते च मध्यमे चाक्षेप्यन् । उदासीने च तेषां च तर्पणव्यादशस्वपि ॥ अथ-शास्त्र I. 12. दौवारिक is lit. doorkeeper i. e. Lord Mayor of the palace; आन्तर्बक्षिक is Lord Chamberlain (the same as *रूपपक्ष* or *कलत्रापक्ष* in *Āśvamedhika-parva* 22. 20 and *Sāhya* 29. 72 and 94 and the *रूपपक्षमहामात्र* in the 12th Rock Edict at Girnar or Mansehra in *Corpus* I. 1. p. 80; and the *अन्तःपुरावक्ष* in *मत्स्यपुराण* 215. 42). यज्ञास्तु is probably Chief Magistrate. समाहर्तु is the minister or the Chief Commissioner of Revenue. संनिधातु is the minister in charge of the Treasury, पदेष्टु functions are not known, नायक is probably नगराध्यक्ष. पौरस्थावहारिक is the Chief Justice whose court was in the capital. कामान्तिक was superintendent of all mines and State manufactories, दण्डपाल was officer in charge of all branches of the army, दुर्गपाल (= राजपाल) officer in charge of all fortis, अन्तःपाल officer in charge of all frontiers, आहविक superintendent of forests and forest tribes. It is possible to regard पदेष्टुनायक as one word meaning the chief of *pradeśas* (they were many, acc. to Kautilya V. 2) and to take *Paura* as equal to the *Nāgaraka* i. e. capital Superintendent (vide *Arthasāstra* II. 36) and *Vyāvaharika* as Chief Justice. For गोविकर्तन see विराट् 2. 7. (cr. ed.).

on the *Yasastilaka* I. p. 91 differ as to the names of these 18.¹⁴⁸ The *Rājatarāṅgīnī* I. 120 informs us that in former times there were only seven departments (*karmasthānas*), that later on they became 18 and that five more were added to these eighteen (IV. 142-143 and 512) viz. mahāpratihāra, mahāsāndhivigraha, mahāsvasāla, mahābhāṇḍāgāra, mahāsādhamabhāga (and so the Heads were called 'adhigata-pañcamahāśabda' i. e. to whom five titles with 'mahā' in them were given).¹⁴⁹ The *Agnipurāṇa* 220 mentions several high functionaries like the senāpati, pratihāra, dūta and heads of departments. The *Śukranītisāra* (II. 69-70) enumerates ten principal high functionaries of the king (*prakṛtis*) viz. purodhas (purohita), pratinidhi, pradhāna (President of council), sacīva (war minister), mantrin (Home minister), prādvivāka (minister of justice), paṇḍita (minister of ecclesiastical matters), sumantra (Finance minister), amātya (revenue minister) and dūta (minister of diplomatic relations) and remarks that others omitted purodhas and dūta from this list of ten and held that these eight should all receive the same pay (verses 71-72), while Śukra was of opinion that the ten high dignitaries should each receive in order one tenth more as pay than the succeeding one (v. 71), that the purohita was the most eminent of all, that among the rest each preceding was more eminent than each succeeding one (II. 74-77), that after these high dignitaries came the other officers (*adhikāriṅga*, II. 279), that then came the *darsaka* (secretary?), and *lekṣaka* (clerk), then the menial servants who waited on the king and lastly the lowest were those who carried out dirty work. In II. 84-87 Śukra briefly brings out the special functions of the

148. उक्तं च । सेनापतिर्नामको राजभेदो वृष्णाधिपो मन्त्री महत्तरो बलवत्तरश्चाचारो वर्णाच्चतुरङ्गबलं दुरोधितोऽमात्यो महामातयश्चेत्यष्टादश राज्ञो लीपाणि भवन्ति । com. on *Yasastilaka* I. p. 91: धर्मसमवायिनः कार्षसमवायिश्च पुरुषास्तीर्यम् । नीतिशा. p. 29 (अर्थसमुद्देश).

149. This is a meaning of *pañcamahāśabda* which is peculiar to the *Rājatarāṅgīnī*. Elsewhere that title generally means one before whom were beaten the five musical instruments. In the Talcher grant of Kulastambha in the 9th century the epithet 'samadhigata-pañcamahāśabda' is applied to a king (*mahārājādhirāja*) in E. I. vol. XII p. 157, while in an inscription from Yewar of about 1040 A. D. it is applied to a *mahāmaṇḍalesvara* (E. I. vol. XII. p. 269). In the Pimpri plates of Dhārāvāṇa Dhruvarāja dated lake 697 the same title is applied to a minister described as महासन्धिबिम्बा-विहृतसामन्त (E. I. vol. X, p. 39). Vide J. B. R. A. S. (New series) vol. 4 pp. 238-245, VII. 487, VIII. 93 for discussion.

ministers from *pratinidhi* to *dūta*¹⁵⁰ and then in II. 88-105 at length. In I. 353-361 Śukra lays down how the king's public *darbar* should be arranged, viz. the king's throne should be in the centre of the western half of the hall on which the king should sit well-dressed, wearing his crown, armour and a drawn sword; his sons, grandsons, brother's and sister's sons should sit behind him, his daughter's sons should sit on his right and on his left should sit in order his uncles, chief agnates, members of the assembly, commanders; in front of the king to his right should be seated his maternal grandfather's relatives, the mantrins, and to the left his father-in-law, wife's brother, officers &c. The Śukranitisāra (I. 374-376) lays down certain very practical rules for the king: 'he should personally observe villages, towns and districts every year; he should see whether his subjects are kept contented or are harassed by his officers, he should not side with the officers (with the man on the spot) but rather should take the side of the subjects, he should remove an officer who is hateful to many (lit. a hundred) people and an *amātya* should be removed if he is found to commit several illegal acts, Śukra (in II. 107-113) further advises the change of portfolios among the ministers (e. g. *sumantra* should be appointed *amātya* or *vice versa*); he says that for each department three should be engaged, one the most clever being the head and two others being *darśakas* (secretaries) who should be changed every three, five, seven or ten years; one man should not be allowed to hold the same high office for a long time, since otherwise he becomes intoxicated with power;¹⁵¹ servants should not do any business without a written order nor should a king order anything to be done except in writing (II. 290).

The words in Asoka's Edict III '*pañcasu pañcasu vāsesu niyāta*' probably refer to the practice of the transfer of high

150. कार्याकार्यपविज्ञाता स्मृतः प्रतिनिधिस्तु सः । सर्वदर्शी यथानस्तु सेनापि सचिवस्तथा मन्त्री तु नीतिकुशलः पण्डितो धर्मतत्त्वविद् । लोकशास्त्रनपज्ञस्तु यादृचिवाका स्मृतः सदा । देशकालपविज्ञाता ह्यमात्य इति कथ्यते । आचर्य्यपपविज्ञाता सुमन्त्रः स च कीर्तितः । सुकनोति II. 34-36.

151. Compare what Kauṭilya says '*यत्नं हि विभं विकरोति*' (VII. 14 p. 305). That power corrupts is forcibly stated by Plato in his '*Laws*' Book IV p. 485 (Random House ed.) 'Chronos knew that no human nature invested with supreme power is able to order human affairs and not overflow with insolence and wrong'.

officers every five years. The 6th caste mentioned by Megasthenes (Fragment 1 p. 41 and Fragment XXXIII p. 85 in McCrindle's 'Ancient India') was that of overseers who inquired into and superintended all that went on in India, and made reports to the king or, where there was no king, to the magistrate. Megasthenes probably confounded the ministers and *adhyakṣas* (who were often hereditary) with a caste. Vide also Fragment XXXIV pp. 86-88 about the officers of state and their duties. It is probably on account of some such rule as is stated in Śukra about frequent change of portfolios that in the inscriptions high functionaries have epithets prefixed to them which indicate their connection with several portfolios e. g. in the Banskhera plate of Emperor Harṣa (E. I. vol. IV p. 208 at p. 211) Skandagupta (who is probably the same as the Skandagupta mentioned by Bāṇa in the Harṣacarita VI as commander of the elephant arm) was the *dūtaka* of the grant and is described as 'mahāpramātāra-mahāsāmanta'; in the Allahabad stone pillar Ins. of Emperor Samudragupta (Gupta Inscriptions p. 10 and p. 15 n. 4), Harīṣeṇa is described as 'Sāṇdhivigrahika' (minister for peace and war), 'Kumārāmātya' (the minister of the Yuvarāja?) and Mahā-dandanāyaka¹⁵² (commander of an army); Prthvīseṇa (a brāhmana) is described as mantrin, kumārāmātya and then mahābaladhikṛta (in E. I. vol. X p. 72, of Gupta Samvat 117). In theory and practice the king was to issue orders in the presence or under the advice of his principal ministers. We read in the grant of Rājārāja I of the Eastern Cālukya dynasty that he issued his command in the presence of the mantrin, purohita, senāpati, yuvarāja, dauvārika and pradhāna (E. I. vol. IV. p. 300 at p. 302). Śukra (II. 362-370) describes the procedure followed in issuing orders about State business. First the mantrin, prādvivāka (Chief Judge), paṇḍita (head of ecclesiastical department), and dūta should write out the business relating to their departments, then the amātya should write thereon (*sādhulikhnam-asti*, the writing is good), sumantra adds 'samyag vicāritam' (it is well considered), the pradhāna writes 'satyaṁ yathārtham' (it is the truth, it is as the business requires), pratidinī should write 'āṅgikartum योग्याṁ' (it is proper to accept this), the yuvarāja should write 'āṅgikartavyam' (it should be accepted), the purohita should write 'lekhyam evā-

152. 'Mahādandanāyaka' may mean 'the chief minister' as Manu VII. 63 states 'on the amātya depends the control (of the government) and discipline (among subjects) depends on control (danda).'

bhinatam' (this writing is approved by me); all then should make their seals after their remarks and then the king should write 'āṅgīkṛtam'¹⁵³ (it is accepted) and affix his seal.

The Rājatarāṅgi shows that persons often rose to ministerial positions from low birth e. g. (V. 73) it states that an engineer of Avantivarman was a foundling, (VII. 207) a watchman became chief minister.

It is necessary to say a few words about some of the great officers of State. First comes the Yuvarāja. Kautilya devotes one chapter (I. 17) to taking care of the prince. The subjects of the prince's education, his association with state business, treatment of princes, good or bad, the coronation of a yuvarāja have already been dealt with (pp. 49, 83 &c.). The younger brother or eldest son was made yuvarāja (Crown Prince) during the reigning king's life (Ayodhyā, chap. 3-6, Kām. VII. 6, Śukra II. 14-16). Rāma on his coronation as king made Bharata the Crown Prince when Lakṣmana refused to be so (Yuddha 131. 93). The yuvarāja and princes were often sent as governors of different parts of the realm. The Divyāvadāna (XXVI. p. 371) states that Aśoka was sent by his father Bindusāra to Takṣaśilā to pacify popular disturbances and Emperor Aśoka himself is said to have sent his son Kuṇāla from Pāṭaliputra to the same town to pacify the citizens that had been offended by the arrogance of the *amātyas* (*ibid.*, pp. 407-8). Khāravela in the Hathigumphā Ins. (E. I. vol. XX at pp. 79, 86) was a yuvarāja for nine years from his 16th to his 24th year. From the Mālavikāgnimitra we learn that while Puṣyamitra was virtual emperor of Bharatavarṣa his son Agnimitra was ruling at Vidiśa and had the authority to divide the kingdom of Berar between two brothers, Yajñasena and Mādhavasena. The yuvarāja is not generally enumerated in the lists of mantrins, but he is one of the 18 tīrthas and from Śukra (above p. 115) it appears that he had a seal and important matters passed through his hands along with those of the ministers. According¹⁵⁴ to

153. Compare the word 'dṛṣṭam' occurring at the beginning of Chanakya and Siva's grants of the Vākāṭaka emperor Pravarasena II and the same word in the plate of the Pallava king Śivaskandavarman (in E. I. vol. I at p. 9). In most plates of the Vākāṭakas the word 'dṛṣṭam' occurs at the beginning; vide E. I. vol. 22 p. 167.

154. जीवन्मन् स्वामिता बुधे न देवात्पण्डिता कचिद् । स्वभावसद्बुधे यस्मान्महानर्धमदाका ॥ विष्णोर्धरेणि नो दत्ता स्वबुधे स्वाधिकारता । स्वाबुधे स्वल्पज्ञे तु सद्बुधे स्वाम्यमादिशेत् ॥ शुक्नीति V. 17-18.

Śukra (II. 12) the *yuvarāja* and the group of *amātyas* are the two arms or eyes of the king, but Śukra V. 17 warns the king against transferring all power to the Crown Prince except when the king is about to die. The *Matsyapurāṇa* 220. 7 quoted in the *Budhabhūṣana* (p. 33) prescribes that the king should entrust to the well-disciplined prince at first unimportant offices and then gradually important ones.¹⁵⁵ If a prince was ill-behaved he was not to be abandoned as he would go over to the enemies and harm the king, but he should be kept confined in a guarded place (Kām. VII. 6, *Budhabhūṣana* pp. 33, 35, verses 77, 93). As regards his emoluments he was placed on the same footing as the *mantrin*, *purohita*, *senāpati*, the queen, the king's mother (Kaut. V. 3). What office is meant by the *Kumārāmātya* in some of the Inscriptions (e.g. Gupta Ins. pp. 10, 50, E. I. vol. X p. 72, E. I. vol. XI p. 83) is not clear. It does not probably mean 'a royal prince who was also an *amātya*', but rather some minister attached to the *yuvarāja*, as contradistinguished from *rājāmātya* (which office occurs in Gupta Inscriptions, p. 218). It appears that in ancient times provincial governors could be total strangers to the royal family. From Rudradāman's Junāgadh Ins. we learn that the governor of Surāstra under Candragupta Maurya was a *vaiśya* called Puṣyagupta and under Aśoka a *Yavana* noble or king called Tuṣāpa¹⁵⁶ (E. I. VIII p. 36 at p. 43).

Next comes the *purohita*. In H. Dh. vol. II pp. 40 and 363 it has been already shown how *purohitas* existed from the most ancient period of the *Rgveda*, how the *purohita* was thought to be half the soul of the king and how the co-operation of the spiritual teacher and the secular head (the king) was deemed absolutely necessary for the prosperity of the kingdom, how Gautama (XI. 12-14) and Āp. Dh. S. II. 5, 10, 16 prescribed the qualities of the *purohita*. Our authorities show that the *purohita* was not a mere priest. The Ait. Br. (40. 2) calls the *purohita* 'rāstragopa' (the saviour of the kingdom). The Śukraniti also,

155. अधिकारेषु सर्वेषु विनीतं विनियोजयेत् । आद्यौ स्वल्पे ततः पश्चात्क्रमेणान्न महत्स्वपि ॥ मत्स्य 220. 7, दृष. p. 33

156a. It is strange that Dr. Beni Prasad in 'The State in ancient India' (p. 189) remarks "the former governor is designated *rājāya* while the latter is called *adhiṣṭhāya*". 'Adhiṣṭhāya' in Rudradāman's Ins. is only a gerund of 'sthā' with 'adhi' and means 'having ruled over'. *राष्ट्रिय* is formed from *राष्ट्र* according to *राष्ट्राधारपाराष्ट्र* यस्मै (Pān IV. 2. 93) and means 'one ruling over a province, a Provincial Governor'. In dramas *राष्ट्रिय* means 'king's brother-in-law'. Kairavāmi says "नाट्यादयश्च राष्ट्रियिकृतो राष्ट्रियः".

though a very late work, similarly describes the purohita (II. 74) as 'rājarastrabhṛt' (the supporter of the king and the kingdom). In the R̥gveda III. 53. 12 we find the idea that the hymns and the spiritual power of the purohita Viśvāmitra protected the Bharata clan.¹⁵⁶ He made the king ready for battle and accompanied him in battle murmuring 'where the arrows fly &c'. (R̥g. VI. 75. 17) while the fight went on (vide Āśv. Gr. III. 12. 19 quoted below n. 308). The Viṣṇudharmasūtra III. 70, Yāj. I. 313, Kām. IV. 32 require that the purohita was to be well versed¹⁵⁷ in the vedas, itihāsa, dharmasāstra or danda-nīti, in astrology and portents, in rites of propitiation contained in the Atharvaveda, of high family, endowed with all vidyās and good acts as stated in the śāstras and with austerities. Kauṭ- (I. 9) states almost the same qualifications for the purohita, requires the king to honour his advice as a pupil honours his teacher or a son his father or a servant his master and says that royal power advanced by brāhmanas, enforced as with a spell by the consultations of mantrins and endowed as with a weapon by the observance of śāstric rules becomes invincible and secures success. Vide Ādi 170, 74-75, 174. 14-15, Śānti. 72. 2-18 and chap. 73, Rājanītiprakāśa pp. 59-61 and 136-137, Rājadharmakaustubha pp. 255-257 for qualifications expected in the purohita. Kauṭīlya (X. 3) states that while a battle is going on the (chief) minister and purohita should urge on and encourage the soldiers by exhorting them with verses from the Veda and classical Sanskrit, promising great rewards in the next world for those who fall in battle. The Śukranītiśāra (II. 78-80) requires in the purohita among other qualities the study of dhanurveda, proficiency in arms and in formations of armies for battle and possession of so much religious merit as to be able to pronounce an effective curse. A purohita was to be distinguished from a r̥trij (a sacrificial priest) as Manu VII. 78 and Yāj. I. 314 show. Vide Mānasollāsa II. 2. 60 (p. 34), Rājanītiratnākara pp. 16-17, Viṣṇudharmottara II. 5., Agni 239. 16-17 for further passages on purohita. Some authorities include

156. विश्वामित्रस्य रक्षति ब्रह्मेदं भारतं जनम् । अ. III. 53. 12.

157. वेदेतिहासधर्मशास्त्रार्थकुशलं कुलीनमपह्नुं तपस्विने दुरोहितं च वरेत् । विष्णु-धर्मसूत्र III. 70 : दुरोहितं यकुर्वीत देवशस्त्रदितोदितम् । दुष्करीत्यां च कुशलमपवाञ्छिते तथा । पाञ्च. I. 313 : दुरोहितमुदितोदितकुलशीलं यद्वद्रे वेदे देवे निमित्ते दुष्करीत्यां चाभिविनीतमापदां देवमातृर्षाणामध्वमिरुपायेष्व यतिकर्तारं कुर्वीत । तमाचार्य शिष्यः पितरं पुत्रो भूत्वा स्वामिनसि चानुवर्तेत । ... ब्राह्मणेनैषितं सर्वं मन्त्रिमन्त्राभिमन्त्रितम् । जयस्यजितमरुतं शास्त्राभ्युपगमशस्त्रितम् । कौटिल्य I. 9 : राजा दुरोहितं कुर्वाणोदितं ब्राह्मणं हितम् । कुताश्चयनसंपन्नमदुवचं सत्यवादिनम् । कात्या. q. in स. वि. p. 20.

the purohita among amātyas or mantrins (e. g. *Vijñāneśvara* on *Yāj. I. 312*, *Sakra II. 69-70*), while others like *Yāj. I. 312* regard him as distinct from mantrins. The purohita was often hereditary. Acc. to *Kautilya* quoted above he was to employ means declared in the *Atharvaveda* to remove calamities, divine and human. The great divine calamities acc. to *Kautilya IV. 3* are fire, flood, disease, famine, rats, wild elephants, snakes and evil spirits.¹⁵⁸ According to *Manu VII. 78* the purohita was concerned with the religious rites laid down in the *śrauta* and *grhya sūtras* and *Āp. II. 5. 10. 14-17* show that the purohita had complete jurisdiction in matters of penance for offences. (*Vas. (19. 40-42)*) provides that if the king lets off an offender deserving to be punished the king had to fast for a day and the purohita for three days and to perform the heavy penance of *Kṛcchra* if the king punished the innocent. According to most authorities he played a role that was pre-eminently religious. He is not mentioned among the 10 limbs of the *sabha* in the administration of justice. *Kāt. 24* (quoted in *S. V. p. 20*) does not require him to be an expert in *arthaśāstra*, though *Kāt. 56* quoted by the *Mit.* on *Yāj. II. 3* and *Sm. C. (II p. 14)* say that the king should enter the Hall of Justice with learned *brāhmanas*, the ministers, the chief justice, the purohita &c. *Yāj. I. 312* and the *Mit.* on *Yāj. I. 312-313* on the other hand prescribe that even after consulting all mantrins, the king was finally to consult the purohita in all secular and religious matters. The *Nītivākyaṃṛta* (*purohitasamuddeśa*) p. 160 states that the divine calamities are: shower of fire (fall of lightning?), excessive rainfall, epidemics, famine, damage or disease of crops, swarms of locusts and other vermin, diseases, goblins and female evil spirits, snakes, wild elephants, rats. The purohita is required to know ritual of five kinds,¹⁵⁹ viz. that dealing with the propitiation of *Nakṣatras*, that of *śrauta* sacrifices, that of the *samhitās* (of *Tantra* worship), that of *Atharvasiras* and that of

158. *देवान्यद्यौ महाभयानि-अग्निददके व्याधिर्दुर्मिहं सूचिका* ग्यालाः सर्वा रक्षन्तीति । तेभ्यो जन्तवर्दं रक्षेत् । अर्थशास्त्र IV. 3 : अग्निर्दुर्मिहोऽग्निवर्धनमिति वरुणी (वरुणी ?) दुर्मिहं सस्योपपातो जन्तुसर्गो व्याधिर्भूतविशाचक्षकिन्नेसर्पग्यालसूचकाश्चेत्यादिः । नीतिशा. p. 160.

159. पञ्चकल्पविधानज्ञं वरयेत् सुवर्धनम् । नक्षत्रकल्पो वेदानस्तुतीयः संज्ञिताविति । चतुर्थः शिरसा कल्पः शान्तिकारस्तु पञ्चमः ॥ पञ्चकल्पविधानज्ञमाचार्यं प्राप्य पूयति । सर्वोपायप्रशान्तात्मा शुभं किं वस्तुधौ चिरम् ॥ विष्णुवर्मोत्तर II. 3. 3-5 quoted in राजर्षिसिंहो. p. 256. *शिरसः* here seems to mean *अथर्वशिरसः* which is an Upaniṣad mentioned in *Gaut. 19.12*, *Vas. 28. 14*, *Viṣṇudharmasūtra 56. 22* among the holy Vedic texts that purify a person of sins. It begins with *देवा ह वै स्वर्गं लोकमगमन्ते देवा इदमष्टव्याम्को भवामिति* । Vide *Muir's Sanskrit Texts vol. IV. p. 356 ff* for text (portion) and translation.

śantis (such as grahaśanti &c.). Calamities, according to Kām. XIII. 20-21, are of two sorts, divine (daiva) and human: there are five kinds of the first viz. fire, flood, disease, famine and epidemic, all of which can be met by human effort and by propitiatory rites, while human calamities should be withstood by constant effort and by proper lines of policy. The same verses are Agnipurāṇa 24L 14-16.

Acc. to Kautīlya (V.3) 48000 paṇas were the salary of the (royal) sacrificial priest, ācārya (teacher), mantriṇ, purohita, commander-in-chief, crown prince, the king's mother, the queens and he holds that "with that amount of maintenance they would not yield to temptation or revolt (against the king)".¹⁶⁰ The amātyas, the chief judge and even the purohita could be punished by the king, acc. to Manu, if any of them went wrong (VIII. 335 and IX. 234) and Kaut. (IX. 3) prescribes that when the purohita is guilty even of a great offence, the remedy is to imprison him or banish him. Some great ministers, though not exactly purohitas of the king, were learned brāhmaṇas and led simple lives such as Caṇakya and Mādhava. There is divergence of views about the salaries set out in the Arthasāstra (V. 3). Jayaswal (in 'Hindu Polity' part II p. 136) holds that the salaries were yearly and the paṇas in which they were paid were silver ones. Prof. Dikshitar (in 'Mauryan Polity' p. 151) holds that the salaries were monthly. Confusion is caused by the fact that there were paṇas of copper, silver and gold. Vide Rājānitiprakāśa p. 294. The Rājastaranginī VII 950 speaks of *dinnūras* of gold, silver and copper. Rao Bahadur K. V. Rangaswami Aiyangar holds that the salaries (in the Arthasāstra) were monthly and in golden paṇas (in 'Ancient Indian Polity' pp. 44-45). Therefore this matter must be investigated. Manu (VIII. 13) promises that those names of copper, silver and gold coins which are well-known among the people (of its day) for purposes of trade will be described by him. Acc. to Manu VIII. 134 and 136, Viṣṇu Dh. S. IV. 6-10, and Yaj. I. 363-365 five kṛṣṇalas are equal to a māsa, 16 māṣas are equal to a suvarṇa, 4 suvarṇas (or five acc. to some) are equal to a pala, a karsa is equal to $\frac{1}{4}$ of a pala and a piece of copper one-fourth of a pala in weight is called a paṇa, which is the same as karsāṇa¹⁶¹ (equal to 80 *ruktikās* or

160. अन्विताचार्यमन्त्रिपुरोहितसेनापतिपुराजराजमहाराजमहिर्योऽथ चत्वारिंशत्सहस्राः । एतावता भरणेनासास्वाद्यन्मकोपके चैवा भवति । काटिल्य V. 3.

161. कर्षणमित्यस्ताऽन्विताः पञ्चसंज्ञा भवति कार्षापणसंज्ञकश्च कार्षापणस्य विज्ञेयस्तान्त्रिकः कार्षिकः पणः इति मनुवचनात् । मिताः OR वा. I. 365; पणकार्षापणज्ञान्दोः पलचतुर्धाऽन्विताः तान्द्रुप्येष नामधेयम् । रुक्तिकाः (II. p. 99); घाम्पमावा वृक्ष सुवर्णमाशकः पञ्च वा मुञ्जाः । ते वीरुक्ष सुवर्णः कर्षा वा । चतुःकर्ष पलम् । अर्घशास्त्र II. 19.

guñja berries). A pala was equal to 320 raktikās. Kaut. II. 19 says practically the same thing. In Kaut. V. 3 the salaries range from 48000 to 60 paṇas from the highest functionaries to the lowest servants. They must all be taken to be for the same period in every case and in the same metal, since Kaut. expressly states no different periods and no difference in metal. Ordinarily the words pana and karsāpana (as stated by Manu VIII. 136 and the Mit. on Yāj. I. 365 and the Śukranīti IV. 1. 116) refer to copper pieces (used as coins) and bearing a stamp. Another table given by Manu VIII. 135-136, Visnu Dh. S. VI. 11-12, Yāj. I. 364 is: 2 raktikās¹⁰⁸ or kṛṣṇalas = one (silver) māsa, 16 māsas = one

162. A raktikā was found by General Cunningham after many experiments to weigh on an average 1.8 grains (vide his 'Coins of Ancient India' pp. 45-46 and also Rapson's 'Coins' pp. 2-3). So that a silver dharana or purāṇa (of 32 raktikās) should weigh about 57.6 grains and a copper pana (of 80 raktikās) should weigh 144 grains. It appears that the weights of Indian coins in different parts and at different times varied a good deal. Cunningham ('Coins of Ancient India' p. 5) states that gold was cheap in India, being as one to eight rates of silver. But in medieval times i. e. about 1300 A. D. (vide Śukra IV. 2. 92-93) gold was 16 times the price of the same weight of silver, which again was 80 times of the price of the same weight of copper. Though, as stated in note 161 above, a copper pana was usually equal to eighty raktikās, a copper pana of 100 raktikās (i. e. of 20 māsas) was known. Nār. (pariśiṣṭa verse 58) speaks of māsa as the 20th part of the karsāpana and the Mit. on Yāj. I. 365 and Vy. Nirmaya p. 207 quote a verse (attributed to Uśanas by Haradatta and Maskarin on Gaṇt. XII. 19) that a māsa is a twentieth part of pana (मासो विंशतिमो षणः पणस्य परिकीर्तितः). The Agnipurāṇa (227. 2) appears to have known a pana of 120 kṛṣṇalas (कुण्डलानां तथा षडष्टा कर्षाणि षणः कीर्तितम्). The verses in Nār. (pariśiṣṭa 58-60) are ascribed to Kāt. by the Sm. C. II. p. 99 and it is stated by both that those terms are in vogue in Pāṇcanāda (Panjab). When the pana of copper was equal to 20 māsas (and 100 guñjas), the copper coin would have been almost of the weight of the modern copper half anna coin. The table given by Nār. (pariśiṣṭa 58-60) is: 4 kākīṇis = māsa, 20 māsas = karsāpana (which is the same as Andikā), 4 karsāpanas = dhānaka, 12 dhānakas = suvarṇa (also called dīnāra). The table given by Br. (as quoted in Sm. C. II p. 99 and V. R. p. 667) is the same. Br. as quoted by Aparārka p. 632 and V. R. p. 111 employs the word 'nāṇaka' for coin, which word also occurs in the Mucchakavikā and in Yāj. II. 240-241. The Amarakośa states that niska and dīnāra are synonyms and also gives other meanings of niska. Śabara on Jal. IV. 3.39 gives the striking example 'no one would spend a karsāpana for finding out a kākī that he had lost'. The Arthamāstra II. 12 p. 84 states that the superintendent of the mint should manufacture copper paṇas, half paṇas, kākīṇis and half kākīṇis. The Visnu Dh. S. V. 96 refers to a golden

(Continued on the next page)

silver purāṇa or dharāṇa; 10 dharāṇas = one (silver) śatamāna. This table was used for silver coins. Thus a dharāṇa would be 1/10th of a *pala* as stated in the *Bṛhatsaṃhita* (10. 13 palada-

(Continued from last page)

māṣaka. Under the Guptas golden coins are mentioned as *dināras*; vide 'Gupta Inscriptions' p. 29 at p. 31 where there is a gift of 25 *dināras* in the Gupta year 93 and pp. 38, 41, 261 (where it is stated that one *bhikṣu* was to be fed every day throughout the year from the permanent endowment of 12 *dināras*). From the Balgram plate dated Gupta *samvat* 128 it appears that one *dināra* was equal to 16 *rūpakas* (silver coins) in E. I. vol. XXI. p. 80. A Mathurā Ins. of the 28th year of Haviṣka speaks of the deposit of 550 *purāṇas* (E. I. vol. XXI. p. 55 at 61). Bhāskaraśāstra (who was born in śaka 1036 and wrote his *Siddhāntaśiromani* in 1072 śaka i. e. 1150 A. D.) gives the following table (in *Lilāvati* 1. 2-4): 20 *varāṇakas* = *kākinī*, 4 *kākinīs* = *pana*, 16 *panas* = *dramma*, 16 *drmmas* = *niṣka*; 3 *yavas* = *guṇjā*, 3 *guṇjās* = *valla* (modern Marathi *vāl*), 8 *vallas* = *dharāṇa*, 2 *dharāṇas* = *gadyāṇaka*; 5 *guṇjās* = *māṣa*, 16 *māṣas* = *karsa*, 4 *karsas* = *pala* and a *karsa* of gold is called *Sevārṇa*. It will be seen that *Nār.* and *Lilāvati* differ as to *वर्णिका*. *Gadyāṇakas* of gold are referred to in the *Paṭṭadakal pillar Ins.* of Kirtivarman I (754 A. D.), where it is stated that a field of 30 *nivartana*s was purchased for thirty *gadyāṇakas* of gold (E. I. vol. III, pp. 6-7). From a verse of the *Caturvīṃśatimata* quoted by the *Mit. on Yāj.* III. 258 it appears that *gadyāṇaka* was also a silver coin. From an inscription of Vikramāditya V near Gadag dated śaka 934 it appears that fines for offences were levied in *gadyāṇakas* (E. I. vol. XX p. 64). The following works may be consulted for further information on Indian coins viz. Cunningham's 'Coins of Ancient India' (1894), Rapson's 'Indian coins' (1897) in the *Grundriss*, C. J. Brown's 'Coins of India' (in 'the Heritage of India' series, 1922). The *Dharmadvaitanirṇaya* (pp. 137-139) and the *Vaijayanti on Viṣṇu Dh.* S. IV. 9 may be consulted for efforts to reconcile the various statements about *Sevārṇa*, *Niṣka* &c. For an informing paper on the most ancient *Denarii*, vide *Proceedings of the British Academy* vol. XVIII pp. 211-266 where it is established that the earliest *denarius* period begins about 187 B. C. Therefore Jolly's assumption (in *Recht* and *Sitte* p. 23 followed by Winternitz in 'History of Indian Literature' vol. II. p. 216. n. 4 that all Indian works in which the word *dināra* occurs cannot have been composed before 2nd century A. D. is unwarranted. Prof. Keith (JRAS for 1913 p. 304) does not accept Jolly's assumption. The *dināra* was variously defined. According to Viṣṇugupta quoted in Hemādri's *Vratakhanda*, a *rūpaka* is 1/16th of *sevārṇa* and a *dināra* was equal to 25 *rūpakas*, while acc. to *Nār.* and *Kāt.* *सुवर्ण* and *दीनार* were synonyms. The *Dharmadvaitanirṇaya* says that a *kāśāpana* (of silver it seems) was equal to eight or ten *dharmabuktas*. One of the verses of the *Jñāneśvari* (composed in 1290 A. D.) that speaks of gold as *द्विचरं* (15 times in price of the same weight of silver) may be cited here 'ये मांशर जरी वरं । तरो राजपट्टीची अशरे । तारे (v. l. सारे) द्विचि सरे । जिवापरी ।' chap. 17 verse 322 (Bhide's and Madgavkar's editions).

śabbāgo dharanam). Nārada (pariśiṣṭa 57) expressly states that a silver kārsāpana is in vogue in the south i. e. a silver pana or kārsāpana was not universal.¹⁶² A golden suvarṇa also comprised 80 guṇjās, while the standard silver pana was of 32. Rhys Davids (in 'Buddhist India' p. 100) states that about the time of Buddha's birth transactions were carried on in terms of the *kahāpana*, a square copper coin weighing about 144 grains and guaranteed as to weight and fineness by punch marks made by private individuals, that there were half and quarter *kahāpanas* also, that a *kahāpana* would be now worth about $\frac{1}{4}$ ths of a penny, though its purchasing power was then equal to about one shilling of the present day. Therefore it is proper to understand that a pana or kārsāpana, when the word is used without any qualification, was meant to be one of copper and that *prima facie* the salaries in Kautīlyā were meant to be in copper panas. This conclusion can be supported by various considerations. Manu VII. 126 prescribes that the wages for the lowest menial servant (such as one who sweeps the house or brings water) is one pana a day and of a superior menial servant 6 panas a day and that the former was to get in addition one pair of garments every six months and every month a dropa of corn (which would be equal to 1024 *muṣṭis* according to the Mit. on Yaj. III. 274). Whatever ages may be assigned to the Arthaśāstra and the present Manusmṛti the two works cannot be separated from each other, if at all, by more than a century or two. Therefore the economic conditions of the one may be held to have not differed much from those to which the other refers. It is impossible to hold that the lowest menial servant got one gold pana a day besides over 30 *muṣṭis* of corn every day (1024 in a month). If that were so, the lowest menial servants of Kautīlyā's days would have to be supposed to be a hundred times better off than their *confreres* in big cities like Bombay towards the end of the 19th century (when menial servants got from five to ten rupees a month without any allowance of grain). Therefore the pana in Kautīlyā V. 3 is not of gold. Kautīlyā (in V. 3) says that a king who has a depleted treasury may make payment of salary by giving forest produce, cattle or fields along with small quantities of cash, that if he has undertaken to colonize a waste tract he may make payment of salary in cash only and not by bestowing a village. In connection

162. कार्षापणो दक्षिणस्यां दिशि रौप्यः प्रचलति । नारदः (परिशिष्ट 57) : दक्षपणिको योजने द्रुतो मध्यमः । दशोच्चरे द्विगुणवत्तम आ योजनशतादिति । कौटिल्य V. 3.

with this he says that 60 *papas* are to be the equivalent of one *ādhaka* of corn (*sastivetanasyādhakam kṛtvā hiraṇyānūrūpam bhaktam kuryat*).¹⁶⁴ An *ādhaka*¹⁶⁵ came to only 256 *muṣṭis* (handfuls) of corn and even in famine times one *ādhaka* could not have cost 60 silver *papas*, much less golden ones. In V. 3 Kautilya declares that an ordinary *dūta* should get ten *papas* for a journey of one *yojana* and twice the wages for each *yojana* up to one hundred. A *yojana* acc. to Kaut. himself (II. 20) is equal to 8000 *dhanus* (acc. to another reading 4000 *dhanus*), a *dhanus* being equal to four *aratnis* (each *aratni* being 24 *angulas*). So taking the highest figure a *yojana* was at the

164. The word *hiraṇya* has two senses 'gold' and 'money or 'cash' whether in gold, silver or copper (as said by Amara who gives 'dravīṇa' as a synonym). When Kautilya says that the king may pay 'hiraṇya' and not 'grāma' he means only cash payment and not necessarily only gold: vide the copperplate grant of Śilāditya VII in Gupta Inscriptions p. 179 at p. 189 where the grant of a village is said to be 'sadhānyahiraṇyādēyaḥ'. Here *dhānya* (payment of tax in kind) is contradistinguished from payment in *hiraṇya* i. e. in cash (either gold, silver or copper). When Patañjali states that the Mauryas being greedy of 'hiraṇya' founded or manufactured images (*Mahābhāṣya* vol. II. p. 429 on Pāṇ. V. 3. 99 quoted in H. Dh. vol. II p. 710 n. 1696) what is meant is that they wanted cash and not merely gold.

165. The measures of capacity such as *आधक*, *पय* occur in the *Mat. hira* Ins. of Huvishka (E. I. XXI. p. 55 at p. 61). According to Parāśara (VI. 70) two *prasthas* are equal to an *ādhaka* and 32 *prasthas* are equal to a *droṇa*. The Mit. on Yāj. III. 275 quotes a verse to this effect: 8 *muṣṭis* = one *kūṣṭhi* or *kūṣṭhi* (acc. to some), 8 *kūṣṭhi* = *pushkala*, 4 *pushkals* = *ādhaka*; 4 *ādhakas* = *droṇa* and 16 *droṇas* = *khāri*. Aparārka (pp. 305 and 846) quotes two verses (which the Par. M. II. 1, p. 141 ascribes to the Bhaviṣya-purāṇa) which say: 2 *palas* = *prasthi*, 2 *prasthis* = *kudava*, 4 *kudavas* = *prastha*, 4 *prasthas* = *ādhaka*, 4 *ādhakas* = *droṇa*, 2 *droṇas* = *kumbha*. The Dandaviveka p. 135 refers to this, adds that some held the *kumbha* to be equal to 20 *droṇas* (Kaut. II. 20 holds *kumbha* to be equal to 20 *droṇas*) and quotes the following verse from *खण्डेश्वर 'कुडवादा वेदमुखा: पर्याद्वेदोऽन्मानका: सारै: कुम्भी विशिष्टानि सारं दृष्टो लोकं यथाकनका:'* s. The word *droṇa* occurs even in the *Rgveda* in the sense of a wooden trough used for holding water or soma juice. Vide Rg. VI. 2.8, VI. 37.2, VI. 44.20, IX. 28.4 etc. In Rg. IV. 32. 17 the sage prays Indra to grant a hundred *khāris* of soma. The words *ādhaka* and *droṇa* occur in the *ardharcādi* group (Pāṇ. II. 4. 31). *Khāri* in Pāṇ. V. 1. 33 and V. 4. 101. The Par. M. II. 1. 141 says on this difference about *kumbha* 'देशभेदेन शास्त्रद्वयेन व्यवधानीयत्वात्' Kaut. (II. 10 p. 104) himself tells us that the measure *droṇa* was of four varieties, 162½ *palas*, 175, 187½ or 200 *palas* according as it was used for measurement in the harem, or for servants or for ordinary dealings or for royal income.

most about 9 or 10 miles (or only $4\frac{1}{2}$ or five miles according to the other reading). To hold that 10 silver panas were allowed to an ordinary *dūta* for going even ten miles (which he could cover in half a day or less) would be too much. Hence also the panas in Kaut. V. 3 are only copper ones. When once it is settled that the panas are of copper, it easily follows that the salaries in panas were monthly. Artisans and craftsmen were, acc. to Kaut., to get 120 panas. If this were yearly, they would get only 10 panas a month, while, according to Manu quoted above, even the lowest menial was to get a pana a day. Therefore 120 panas (of copper) were the monthly salary of an artisan. A monthly salary is more natural and practical than a yearly one. Other ancient writers like Śaṅkha-Likhita (in *Rajanitiprakāśa* p. 252) contemplate a monthly salary for soldiers (viz. two *suvarṇas* a month).¹⁶⁶ From the Nasik Inscription No. 12 (E. I. Vol. VIII.

166. शङ्खलिखितौ । राजनयोधानां सततमन्वीक्षणं प्रतिमासं द्विसौवर्णिकी वृत्तिः पाण्यमार्थं स्मरणं चाहुमार्थं वा । स्वयंतेषु दानमलङ्करीषो विदितेष्वनुपदानं कुलचारिवशील-
विद्यालक्षणमुपाधिकेषु संमानं प्रयुज्यते । राजधर्मकाण्ड p. 38, राजनीतिप्रकाश p. 252.
राजधर्मकाण्ड explains राजकार्येण मृतेषु योषेषु तदुपादिन्यो दानं दद्यात् राज्ञा विपा-
तस्या । प्रतिद्वेष्टु तु योषेष्टु दानमेतन्नाहुधिकमपि वस्त्रादि देयमिर्यथः. This provides for
pension to the dependents when the soldier dies on duty, special bonuses or
favours for special valour, work or worth.

A few words may be said about words like *suvarṇa*, *śatamāna*, *niśka* &c. The word *kṛṣṇala* occurs in the Tai. S II. 3. 2 1. *Hiranyakāra* (goldsmith) is found in Vāj. S. 30. 17. In Rg. I. 126. 2 gifts of a hundred *niśkas* and horses are mentioned and in Rg. IV. 37. 4 the Rbhus are address-
ed as wearing 'good *niśkas*'. In Atharva V. 18. 3 'niśka' occurs and in the Ait. Br. (39. 8) damsels who are *niśkakanthyah* (whose necks are adorned with necklaces of *niśkas*) are among the gifts. So 'niśka' was probably a gold piece used as a coin or an ornament or a thin plate of gold like a modern *putli*, several of which are even now worn by women in the form of a necklace. In Rg. II. 33. 10 Rudra is said to wear 'visvarūpa-niśka' which is probably an allusion to golden pieces stamped with various figures. In Rg. VI. 47. 23 the sage says that he received ten 'hiranyapiṇḍas' (golden pieces) from Divodāsa. In Rg. VIII. 78. 2 a prayer is offered to Indra for the bestowal of golden 'mana', which may be the precursor of 'Śatamāna'. This last occurs in the Tai. S. VI. 6. 10. 2. Pāṇ. (V. 1. 27, 29, 30) respectively mentions *śatamāna* (what is bought for a *śatamāna* is called *śatamāna*), *kāraṇaṇa*, *niśka* and V. I. 34 refers to *pana*, *pāda* and *māsa*. Patañjali (*Mahābhāṣya* vol. III. p. 369 on Pāṇ. VIII. 1. 12) gives the instance 'from this *kāraṇaṇa* give one *māsa* to each of these two persons who are here'. The sūtra of Pāṇini V. 2. 120 (*rūpād-āhataprasastayor-yap*) conveys that

p. 82) we learn that in the early centuries of the Christian era 35 *karṣāpanas* were equal to one *suvarṇa*.

Hopkins in 'Position of the ruling caste' J. A. O. S. vol. XIII pp. 151-162 traces how the influence of the *purohita* grew. One cannot accept his views about there being three layers in the *Mahābhārata* and the conclusions from such dealing with the text that he draws, which are rather subjective. Gradually the importance of the *purohita* waned. As the *Śukranītisāra* cited above (n. 150) shows, long before that work he came to be omitted by several writers from the council of ministers and was supplanted by the *Pandita*. The same functions came to be exercised by an officer called *dharmādhyakṣa* or *dharmādhikaraṇika* in Bengal and other countries. The *Matsyapurāṇa* (215.24) states the qualifications of a *dharmādhi-kārin*.¹⁶⁷ Vide E. I. vol. 14 p. 156 at p. 160 of the *Nalhati* grant of Ballālasena, where we have both *purohita* and *mahā-dharmādhyakṣa* mentioned among the great functionaries of State and the Benares copper-plate of the Cedi king *Karnadeva* in 1042 A. D. in E. I. vol. II p. 309 where we have *mahādharmādhi-karaṇika* but no *purohita*. Besides another officer called *sāmivatsara* (astrologer) gradually took over some of the functions of the *purohita*. The *Viṣṇudharmasūtra* III. 75 (*rājā ca sāmivatsarīyeṣu sāmivatsarūdhīnaḥ syāt*) requires the king to depend on the *sāmivatsara* in all matters. The *Bṛhat-saṃhitā* (2.9) states that a king without a *sāmivatsara* mistakes his path like a blind man. *Kām.* 4.33 and *Viṣṇudharmottara* II. 4. 5-16 recommend reliance on him. *Kauṭilya*^{167a} IX. 4 was himself against too much reliance on astrology, while *Yāj.* I. 307 holds that the rise and fall of kings depend on the (aspects or influence of) planets.

(Continued from last page)

Pāṇini knew metal pieces that were well beaten and trimmed into good-looking coins. The *Vārtika* 'Kākinīyāścopasaśākhyaṇam' (on Pāṇini V. 1. 33) establishes that *kākinī* was used in those days as a medium of purchasing goods. The *Kāśikā* gives 'rūpyo dīnārah' as an example: निष्ठातिकाताडनादिना दीनारादिषु रूपे यदुत्पद्यते तद्वत्तमित्युच्यते। आहतं रूपमस्य रूपो दीनारः। रूपं कार्षापणम्। काशिका.

167. समः शत्रौ च मित्रे च धर्मज्ञास्त्रविशारदः। विमरुदः कुलीनश्च धर्माधिकारिणी मनेषु॥ मत्स्यपुराण 215. 24 and बुध. p. 48 verse 216.

167a. मन्त्रवमतिवृत्तान्तं बालमर्थोत्तिकर्तते। अर्थो ह्यर्थस्य मन्त्रे किं करिष्यन्ति तारकाः॥ अर्थशास्त्र IX. 4 (last verse but one)

Senāpati: The qualities of a commander-in-chief are stated in several places such as Kautīlya (II 33), Ayodhyā 100.30 (= Sabhā 5. 46), Śānti 85. 31-32, Matsya 215. 8-10, Agnīpurāṇa 220. 1 ff, Kām. XVIII. 27-44, Viṣṇudharmottara II. 24. 4-6, Mānasollāsa II. 2, verses 90-92 p. 37. Acc. to the Agnīpurāṇa 220. 1, Matsya 215. 10 the commander-in-chief must be either a brāhmana or a ksatriya. Śukra (II 429-430) requires that a ksatriya should be preferred as senāpati, but if a valiant ksatriya be not available a brāhmana may be chosen, but a śūdra should not be chosen. Acc. to the Mānasollāsa he should possess the following qualities: good family, character, courage, proficiency in (several) languages, cleverness in riding horses and elephants and in the science of arms, knowledge of omens and medicine, knowledge of the breeds of horses and of the difference between what is essential and non-essential, liberality, sweet speech, self-control, intelligence, resoluteness. In the Mahābhārata senāpatīs are elected and consecrated (vide Udyoga 151, Droṇa 5, Karna 10), but this was not so in later times. He is appointed by the king on his own initiative.

Dūta: (Ambassador or messenger). The word and the office of *dūta* as messenger was known in the most ancient times. In Rg. I. 12.1, I.161.3, VIII. 44.3 Agni is said to be the *dūta* and is requested to bring the gods to the sacrifice. There is also attached to the word the meaning of espionage, since Saramā, the bitch of the gods, is represented in Rg. X. 108. 2-4 as sent by Indra to find out the treasures of the Panis. The Udyogaparva (37.27, cr. ed. 37.25) specifies the eight qualities of a *dūta* viz. he must not be stiff-necked, nor timid, nor dilatory, he must be kind and amiable, not liable to be won over by others, free from diseases, endowed with a fine mode of speech.¹⁶³ Śānti 85.28 refers to seven qualities. Vide Ayodhyā 100.35, Manu VII. 63-64, Matsyapurāṇa 215. 12-13 for the qualities of a *dūta*. The *dūta* should speak only what he has been ordered (by his king) to speak, otherwise he would be liable to be killed (Udyogaparva 72.7, cr. ed. 70.7). Śānti 85. 26-27 say that the person of the *dūta* is sacred. Kautīlya devotes one chapter (I 16) to the treatment of the subject of *dūta*. He states that the *dūta* is to be sent by the king after the line of

163. अस्त्यमस्त्रीयमदीर्घवृत्तं सासुकोलं श्रुत्वा न जायते न वै, । अरोमजासीपशुद्वाराचार्यं
हृतं वदन्त्यसुप्तोपपन्नम् ॥ उद्योगपर्व ३७. २७.

policy has been settled at a council of ministers to the king who is to be attacked (vide Kām. XII. 1 also). A dūta is of three kinds: (1) *nigatārtha*¹⁶⁹ (one to whom is entrusted full discretion as to what is to be said) is one who is possessed of the qualifications required in a minister (*amātya*), such as Kṛpā from the Pāṇḍavas or the ambassadors in modern times; (2) *parimitārtha* (entrusted with a definite mission, an envoy) who possesses the same qualifications as the first less by one quarter; (3) *āśamahara* (a mere carrier of royal writings or missives) who possesses only half the qualifications of the first. The Mit. on Yāj. I. 328 lucidly explains the three varieties. Kauṭ. dilates at great length on the qualifications of the dūta, what he has to note while in the enemy country, how he is to behave (such as avoiding women and wine), how he is to gather information through spies; but all this has to be passed over for want of space. Vide Kām. XII. 2-24 for the same. Kām. (XII. 22-23) briefly sets out the following duties of the dūta; determining those who are inimical to the king to whom he is sent, winning over to his side the friends and relatives of the enemy king, finding out the (number and equipment of) forts, the economic resources and military strength of the enemy king, collection of news as to what the enemy intends to do, bringing over to his side the officers in charge of the districts of enemy country, collecting knowledge about the places of the enemy where battles can be waged by his king or whence he can pass away swiftly. Manu VII. 65 says that it is the dūta who brings about alliance or war. Kauṭ. says that when the ruler to whom the dūta is accredited becomes displeased at the message he brings, the dūta should reply¹⁷⁰ 'All kings, you and others, speak through their dūta. Therefore dūtas have to deliver the message entrusted to them even if weapons are raised (to threaten them); even the lowest caste dūtas (*cāṇḍālas*) are not to be killed, what need be said about a dūta who is a

169. उद्भूतमन्त्रो दूतपणिभिः । अमात्यसंपवृत्तेनो निमुद्यार्थः । यादृशगुणहीनः परिमितार्थः । अर्धगुणहीनः शासनहरः । अर्थशास्त्र I. 16: 'दूताश्च ये एकमेव राजान्तरं प्रति मत्तायत-
माचरन्ति । ते च त्रिभिधाः । निमुद्यार्थाः सन्दिद्यार्थाः शासनहराश्चेति । तत्र निमुद्यार्था राज-
कायाभिः वृक्षकाढीवितानि स्वयमेव कथयितुं क्षमाः । उक्तमार्थं ये परस्मै निवेदयन्ति ते
सन्दिद्यार्थाः । शासनहरास्तु राजलेखाहारिणः । निता. on वाङ्म. I. 328.

170. तं नृपात् दूतमुक्त्वा वै राजानस्य चान्ये च । तस्माद्दूतमेवापि शस्त्रेषु बध्नीकं
बन्धनसोपान्तावसायिनोऽप्यवस्थाः । किमिदं दूतमार्गद्वयः । परस्मैतद्व्याकथनेन दूतधर्मं
इति । अर्थशास्त्र I. 16. Almost these very words occur in नीतिशास्त्रावली (दूतसंभवेन
p. 171) and वसुधैकुल्य III. p. 564.

brāhmaṇa? This (that I utter) is the message of another. It is my duty to say it'. The Rāmāyaṇa (V. 52. 14-15) says that good men do not allow the killing of a dūta, but certain modes of dealing with him (viz. lashing him, shaving his head) are allowed in certain cases.

A dūta is to be distinguished from a *cara* or *cāru* (spy), as done by Kauṭ., Kām. XII. 32, Yaj. I. 328. Kām. XII. 33 says that a dūta is an open (*prakāśa*) spy, while a *cara* is a spy who works in secret. In modern times also 'an ambassador is often nothing more than an honourable spy acting under the protection of the law of nations' (Encyclopædia Britannica on 'espionage'). Kauṭ. devotes four chapters to spies (I. 11-14) and Kām. (XII. 25-49) also deals at great length with them. The Śukranitiśāra (I. 334-336) states that the king should learn every day at night from his secret spies the intentions and actions of his subjects and officers, and the opinions of ministers, enemies, soldiers, the members of the assembly, relations and the women in the harem. The *cara* must, according to Kām. XII. 25, possess ability to infer the inner thoughts (of men), must have a good memory, must be soft in speech, have quick gait, be capable of enduring privations and heavy labour, swift in action, ready-witted. Kauṭ. (I. 11) says¹⁷¹ that spies are those who work in the guise of a *kāpatika* (a bold pupil capable of knowing the minds of others), *udāsthita* (a sham ascetic, who has fallen from the real duties of asceticism and is endowed with intelligence and pure character), *garhapatika* (a householder who is a cultivator that has not the means to maintain himself, has intelligence and is of pure character), a *caṇḍāhika* (a trader who cannot maintain himself by trade and is possessed of intelligence and pure character), a *tāpasa* (a spy practising austerities, who has either shaved his head or has matted hair and is desirous to maintain himself), a class-mate or colleague (*sattrin*), a desperate character (*likṣṇa*), a poisoner and a female mendicant. The first five of these are called by Kautilya five *śaṁsthās* (groups—

171. उपधामिः श्रुद्धानामप्यवर्गो गृह्यदुपचक्षुष्याद्वेषः । कापटिकोद्वास्थितपुरुषपटिक
वेद्वेकतापस्यवज्रान् सविस्तिष्ठनरसङ्गमिधुकीन् । परममैशः प्रवृत्तः छात्रः कापटिकः । ...
यज्ज्यामप्यवसितः यज्ञासीचक्षुष उद्वास्थितः । कर्षको दृष्टिशीलः यज्ञासीचक्षुषो
गृहपटिकः प्रवृत्तः । कापटिको दृष्टिशीलः यज्ञासीचक्षुषो वेद्वेकतापस्यवज्रान् । ... सुखो जटिलो
वा दृष्टिकामस्तापस्यवज्रान् । ... दृष्टिताश्चार्थमानाम्पा यज्ञा राजोपजीविनाम् । जर्मीपुः
शौचमित्येवः यज्ज संस्थाः प्रकीर्तिताः ॥ अर्थशास्त्र I. 11. यज्ज्यामप्यवसित means the same
thing as यज्ज्यामप्यवसित, which occurs in याज्ञ. II. 183 and is explained by the
गिताश्रया as यज्ज्यामप्यवसितोऽवसितः प्रवृत्तः. मेधातिथि on Manu VII, 154 quotes
almost verbatim a large part of Kauṭ. I. 11 from कापटिको and a portion
from I. 12.

or institutions), which should be honoured by the king with awards of money and marks of respect and through which the king is to test the purity of the character of his servants. Kautilya says that the spy called *udāsthata* should carry on agriculture, cattle-rearing and trade on land set apart for the purpose, should be supplied with plenty of gold and disciples and should afford to all (sham) ascetics food, clothing and lodging, direct them to detect particular crimes and report. The spy called *tūpasa* was to stay near the capital, to have many pupils, to pretend to eat once in a month or two only a handful of vegetables or grass and eat secretly his favourite dishes. His disciples were to proclaim that he possessed supernatural powers, he should pretend to make predictions about gain or fires or fear from robbers after ascertaining from his pupils by nods and signs such events. In I. 12 Kaut. deals with wandering spies (called *satthava*) viz. *satthins* (who are orphans that are to be maintained by the State and that are taught palmistry, sorcery, tricks of legerdemain &c.), *tikṣṇa* (desperadoes who, regardless of their lives, may fight elephants for money), *rasada* (who have no affection even for their relatives, are indolent and cruel), *bhikṣuki* or *parivrājikā* (a poor brāhmaṇa widow, clever and desirous to earn her livelihood, honoured in the king's harem and visiting the families of mahāmātras or high ministers). These are to spy on the 18 *ūrthas* (mentioned on p. 112 above) in public. For spying on their private character persons pretending to be hump-backed, dwarfs, kirātas (pigmyes), the deaf and dumb, idiots, the blind, and others that are actors, dancers, singers and the like and women are to be employed. This information is to be tested by the persons belonging to the five *saṁsthās* (mentioned above on p. 129), but these are to act without their being known by the wandering spies and *vice versa*. Then further testing by other spies follows. When the information received from these three sources tallies then it will be held reliable: if the information frequently disagrees, the spies should be secretly punished or discharged. A similar rule about sending several spies on the same mission without their knowing each other is laid down by Viṣṇudharmotara II. 24. 66-67. Kaut. in I. 13 deals with espionage on subjects in general (i.e. those in the capital and other parts of the country). Spies are to pretend to take sides, some praising the king as possessed of all good qualities, others qualifying that praise. They were also to report the rumours spreading among the people, to report whether there was discontent and the king was to honour those who were reported to be contented and to

bring round the discontented by conciliation, gifts, sowing dissensions among them or by punishing them. In I. 14 Kautilya deals with the employment of spies for taking advantage of parties in a foreign State i. e. groups of persons angry with the foreign king or afraid of him or of persons who are ambitious or proud, who are to be won over by appropriate words and stimuli. It will be seen how there was a network of spies of all kinds, so much so that Kām. XII. 28 declares that spies are the king's eyes (*cāracakṣur mahipatīḥ*). The Viṣṇudharmottara II. 24. 63 says the same (*'rājānāḥ-cāracakṣuṣaḥ'*) and also Udyoga 34. 34 '*cāraṇaḥ pātyanti rājānaḥ*'. In IV. 4-6 Kautilya dilates¹⁷² upon the employment by the samāhartṛ (Collector) of a host of spies for suppressing those who are thorns (or disturbers of peace), these being employed for detecting judges (dharmastha) and superintendents of various departments that take bribes, counterfeiters of coins, adulterers, thieves and robbers and other criminals. Kautilya relies in extreme cases on spies even in the decision of judicial matters. He says (III. 1 last verse) 'when owing to the depositions of witnesses the plaintiff's case and the defendant's case are both destroyed, when the cause of either of the parties is found through the spies to be false, then the decree shall be passed against that party'.¹⁷³ In Droṇaparva 75. 4 it is said that Kṛṣṇa had his spies in the army of Duryodhana and vice versa (74. 1). Sānti 69. 8-12 and 140. 39-42 mention the places where spies are to be set¹⁷⁴ up and emphasizes that they should not know each other. One need not feel surprised at the machinery of espionage that Kautilya so elaborately describes. All governments in modern times employ spies, informers and secret agents to keep themselves informed of the activities, views and resources of their opponents. We know also how the Indian Police, in order to catch offenders against the Prevention of Gambling Act or other similar Acts, employ agents with marked coins or notes and draw in their net unsuspecting people.

172. समाहर्ता जनपदे सिद्धतापसप्रजितचक्रचरचारणकुलकपच्यम्बुनकातामिकनै-
मित्तिकनौदृत्तिकचिकित्सकोन्मत्तमूकनधिरजडान्धवैदेहककाशशिपिकुशीलवपेक्षसौमित्रकापू-
षिकपात्रमोसिकोदैनिकपञ्चनाव पण्डितपण्ड । ते ब्राम्हणान्मन्त्रशालां च शौचाशौचं
विदुः । अर्धशास्त्र IV. 4. Compare मोक्षिव्याससूत्र (आरत्तमुद्रेश) p. 172 for a long list
of various kinds of people as spies.

173. पूर्वोत्तरार्धव्यापारे साक्षिचक्रव्यकारणे । आरहस्तापच निष्पाते पदेष्टव्यः परा-
जपः । अर्धशास्त्र III. 1, last verse.

174. पाचवर्गस्तपसादीनि परराष्ट्रे निवेशयेत् । उद्यानेषु विहारेषु वनास्वानमयेषु च ।
वायुवाते पदेशेषु तीर्थेषु च समाशु च । शान्ति 140. 39-42; पश्चा न विदुरन्मोक्षं न वि-
धेवास्तथा हि ते । शान्ति 69. 10.

CHAPTER V

RĀSTRA (THE TERRITORY OF A STATE)

The word 'rāstra' occurs even in the Rgveda (IV. 42.1, 'mama dvitā rāstram ksatriyasya')—'mine is the kingdom on both sides (or in both spheres)' says king Trasadasyu. In Rg. VII 34.11 Varuṇa is praised as the Lord of rāstras (rāja rāstrānām &c.). In Rg. VII 84.2 and X. 109. 3 the word rāstra occurs. In a very famous benedictory ¹⁷⁵ passage of the Tai. S. VII 5. 18. 1 (= Vāj. S. 22.22) one of the blessings invoked is 'may the king in this kingdom become brave, a skilled archer, and a great warrior'. Vide Tai. Br. III. 8. 13 for explanation of the Tai. S. passage. In the Atharvaveda XII. 1. 8 and 10 the earth is called mother and invoked to impart to the rāstra strength and brilliance (or energy). Kām. VI. 3 says ¹⁷⁶ that since all the elements of the State spring from the territory of the State, the king should raise up his territory with all his efforts. The Agnipurāṇa 239. 2 holds that rāstra is the most important of all elements of the State. Manu VII. 69 prescribes that a king should make his home in a country that is not water-logged (i. e. is dry and not moist), ¹⁷⁷ is rich in crops, inhabited mostly by Āryas (or well-conducted people), not disturbed (by epidemics &c.), that is charming (owing to trees, flowers and fruits), the chiefs in which have submitted to him and in which livelihood can be had easily. Yāj. I. 321 and Viṣṇudharmasūtra III. 4-5 are to the same effect. Kām. (IV. 50-56) remarks 'the territory of

175. आ ब्रह्मन् ब्राह्मणो ब्रह्मचर्यंसी जायतामात्मिन राज्ञे राजन्य इवभ्यः शूरो महा-
रथो जायतां द्योग्मी धेनुर्वाहोऽनन्तरागाधुः सतिः दुरन्ध्रिर्वीर्यं निष्पन्न स्पेष्टः समेषो युवार्य
पञ्चमानस्य वीरो जायतां निकामे निकामे नः पञ्चमो वर्षतु कलिन्पो न ओषधयः पच्यन्तां
योगक्षेमो नः कल्पताम् । वै. सं. VII. 5. 18. 1, वाज. सं. 22. 22 (with slight
variations).

175a. राज्यभूतान् च सर्वेषां राजाज्ञवति सम्भवः । तस्मात्सर्वपदार्थेन राजा राज्ञे
समुजयेत् ॥ काम. VI. 3. The राज. र. p. 86 ascribes this to शुक्र (and reads the
last word as पसाधयेत्).

176. अल्पीदकतृणो यस्तु तत्रातः मयुरातपः । स जेषो जाडूलो देशो बहुधाग्नादि-
संयुतः ॥ quoted by कुल्लुक on मनु. VII. 69; स्वल्पशुशीदकपर्वतो बहुपक्षिपुनः मयुर-
वर्षातपश्च जाडूलो देश इति । quoted by राजनीतिप्रकाश p. 197 from a स्मृति. The
मिता on वा. 1.3.21 remarks चक्षुर्दृष्टोदकतपर्वतोदेशो जाडूलस्तथाप्यत्र स जाडूलतपर्वतो
देशो जाडूलज्ञादेनाभिधीयते ।

the king depends for its prosperity on the qualities of the soil, the prosperity of the territory tends to the prosperity of the king; therefore a king should choose for the sake of his prosperity land possessing good qualities. That land is preferred for the sake of prosperity that is endowed with various crops and minerals, is full of merchandise, mines and various substances, that is favourable to cattle-rearing, that abounds in water, is inhabited by well-conducted people, is charming, has forests and elephants, has facilities of water and road transport and does not depend upon rain-water only.¹⁷⁷ Land that is full of gravel and stones, full of forests always infested with thieves, that is waterless, full of thorny bushes and snakes is not fit for choosing as a *rāṣṭra*. A country is to be preferred that yields livelihood easily, is possessed of the qualities of good land (cited above), is full of water, that has hills in it, that consists mostly of *sūdras*, artisans and merchants, the husbandmen in which undertake great projects, that is loyal (to the king) and averse to the king's enemy, that can put up with troubles and taxes, that is large in extent, full of people from various countries, that follows the right path, that possesses plenty of cattle and wealth, the principal men in which are not foolish nor vicious. These requirements show that the country must be prosperous, well-stocked with the necessities of life and well suited to defence. There is also some difference of opinion among the *smṛti* writers about the composition of the population. *Manu* VII. 69 requires that the kingdom should consist mostly of *āryas* (*āryaprāya*), while *Viṣṇu Dh. S.* III. 5 holds that a country should be peopled mostly by *vaiśyas* and *sūdras*. In another place (VIII. 22) *Manu* says that that country in which *sūdras* abound, which is full of atheists and void of *dviṣas* is overwhelmed by disease and famine and perishes. Similar provisions are found in the *Matsyapurāṇa* 217. 1-5, *Viṣṇudharmottara* II. 26. 1-5, *Mānasollāsa* (II. 3. verses 151-153), *Nītivakyaṃṛta* (*Janapadasamuddeśa* p. 191 which defines *rāṣṭra*, *visaya*, *deśa*, *janapada* &c.), The *Matsyapurāṇa* 217. 5 and *Viṣṇudharmottara* II. 26.5, (*examidham yuthātubham vājā viṣṇamānset*) point out that

177. अत्रेवमातृका चेति श्रवते धुविभूतये । काम. 4. 52. देशो नद्यम्बु-पृष्ठचम्बु-संपन्नोऽपिवाहितः । स्वाश्रयमातृको देवमातृकश्च यथाक्रमम् ॥ अमरकोशः; where the rice crop depends solely on the rainfall the country is called देवमातृक (देशो मात्रा यद्व) and where it depends on the water of rivers, tanks &c. it is called नदीमातृक.

every *rāṣṭra* cannot be expected to possess all the qualities mentioned by them and that the king must do the best with such qualities as his country possesses. Kaṭilya II. 1 advises¹⁷⁸ the king to found a district of villages either on old sites or on new ones by inducing people from other countries to immigrate or by causing thickly populated parts of his own country to send its overflowing population and to see that each village consists of not less than one hundred families nor more than five hundred, is peopled mostly by *sūdra* cultivators, has an extent of one *kroṣa* or two and is capable of offering help to its neighbours.

According to Paurāṇic geography there are seven *dvīpas*, viz. Jambu, Plakṣa, Śālmala, Kuṣa, Krauñca, Śaka and Puṣkara (Viṣṇupurāṇa II. 1. 11 ff) and each *dvīpa* is divided into *varṣas*. Jambudvīpa has 9 *varṣas* of which Bharatavarṣa is the first (Viṣṇupurāṇa II. 2. 12 ff). The Mahābhārata speaks of 13 *dvīpas* (Ādi. 75. 19, Vanaparva 3. 52 and 134. 20) and 18 *dvīpas* also (Drona 70. 15). For Bharatavarṣa vide H. Dh. vol. II. pp. 17-18. Manu II. 20 looks upon the holy land of Kuruksetra, of the Matsyas, Pañcālas and Śūrasenas as 'the chosen country' the learned brāhmaṇas in which were to be the leaders and guides of the whole world in appropriate thoughts and actions. The Viṣṇu (II. 3. 2), Brāhma, Mārkaṇḍeya 55. 31-22 and other purāṇas proudly assert that Bharatavarṣa is the land of action (*karmabhūmi*). This is patriotism of a sort but not of the kind we see in western countries. Bharatavarṣa itself has comprised numerous countries from the most ancient times. The names of countries and the tribes or people inhabiting them were the same (vide Pāṇini IV. 1. 168,

178. भूतपूर्वमभूतपूर्वं वा जनपदं परदेशापवाहनेन स्वदेशाभिव्यक्त्यमतेन वा निवे-
शयेत् । सुदुर्कर्षकमार्थं कुलजनान्तरं पञ्चजनकुलपरं वार्मं क्रोशन्त्रिक्रोशसेमानमन्योऽप्यारब्धं
निवेशयेत् । अर्थशास्त्र II. 1. This passage clearly shows that Kaṭilya at least
employed the word *janapada* in the sense of a territory to be colonized
and as one which was either included within the kingdom or not so included.
Dr. Prān Nath's interpretation of *janapada* that it was only 'a part of the
kingdom' (p. 47, 'Study in the economic condition of ancient India')
cannot be accepted in view of the express words भूतपूर्वमभूतपूर्वं. The usage of
classical writers and the Purāṇas shows that *janapada* means simply 'country'
and Amara gives it as a synonym of देश and विशय and हरिवर्मान् explains that
जनपदं is called राष्ट्र. The Kāvya-mīmāṃsā on which Dr. Prān Nath relies
for the number of countries employs the word *janapada* for the names of
the countries in the four quarters of India (not for parts of any kingdom).

IV. 2. 81). In the Rgveda we come across the tribes of Yadus, Turvasas, Druhyas, Anus and Pūrus (Rg. 1. 108. 8, VIII. 10. 5 &c.) and the countries of Cedi (VIII. 5. 39), Kikata (III. 53. 4), Bṛjka (VIII. 7. 29), Ruśama (V. 30. 12), Vetasu (X. 49. 4). In the Atharvaveda V. 22 several peoples or countries are mentioned of which Bahlikas (in vv 5 and 9), Mūjavat (vv 5 and 8), Gandhāri, Aṅga, Magadha (in v. 14) deserve notice. The Ait. Br. (38. 3) divides India into five divisions in the east, south, west and north (the Uttara Kuruś and Uttara Madraś) and in the centre (Kuru-Pāñcāla and Vāśa-Uśinara). India was divided into two parts, Dakṣiṇāpatha (from the Narmadā southwards) and Uttarāpatha at least some centuries before Christ, since the Hāthigumphā Ins. (E. I. vol. 20 at p. 79) mentions a great many kings of Uttarāpatha and the Mahābhāṣya refers to lakes in Dakṣiṇāpatha.¹⁷⁹ In the Brāhmanas frequent mention is made of the Kuru-Pāñcālas (Tai. Br. I. 8. 4), Uttarakuru, Uttara-madra, Kuru-Pāñcālas, Vāśa-Uśinaras (in Ait. Br. 38. 3), Kuru-Pāñcālas, Aṅga-Magadhas, Kāśi-Kośalas, Śālva-Matsyas, Vāśa-Uśinaras in Gopatha II. 10 (ed. by Gastra). The Gandhāras occur in Chāndogya Up. (VI. 14. 1), Videha in Br. Up. III. 1. 1, Madraś in Br. Up. III. 3. 1. In the Mahābhārata there are long lists of countries in various connections, which are more than 200 (e. g. Sabhā 4. 21-32, 20. 26-30, Sabhā 25 ff, Sabhā 52. 13-19, 53. 5-9, Virāṭa 1. 12-13, Bhīṣma. 9. 39-69, 50. 47-53, Droṇa 11. 15-18, 70. 11-13, Āśvamedhika 73-78, 83. 10 ff.) The Baudhāyana-grhyaśeśasūtra I. 17 prescribes a mandala for the worship of the Sun and names nine countries in the eight directions and in the centre as representatives. The Purāṇas also contain long lists of countries e. g. Matsya 114. 34-56, Mārkaṇḍeya 57. 32-67 and chap. 58, Brāhma 17. 10-15 and 25. 25-39. The same country sometimes has two names (e. g. Vīdarbha and Krathakaiśika denote the same country in Raghuvamśa VII. 1 and 32). 'Buddhist India' (by Rhys Davids p. 23) mentions the sixteen peoples (or countries), lists of which occur in the Aṅguttaranikāya I. p. 213, IV. p. 252 and in the Dīghanikāya

179. The महाभाष्य names at least the following countries: अजमेर, अङ्ग, अम्बह, अवन्ति, इक्ष्वाकु, उशीनर, कपिक, कर्षेर, कलिङ्ग, कश्मीर, काशि, कुन्ति, कुङ्ग, केरल, कोसल, कुण्डक, मगध, मोग, जिह्वु, जित्त, दशार्ण, नीचक, नीप, नैश, पञ्जाल, पारसकर, इण्डु, मगध, मज्ज, महिष, मालव, मुगधर, वङ्ग, विदर्भ, विदेह, इजि, शिबि, सुह्र, सौवीर. Some countries like अवन्ति, अश्मक, कलिङ्ग, कम्बोज, कुङ्ग, कोसल, मगध, मज्ज, मालव, सौवीर are mentioned even by वाकिनि (in IV. 1. 170-176, IV. 2. 108).

II. p. 200 viz. Angas, Magadhas, Kāśis, Kosalas, Vajjis, Mallas, Cetis (Cedis), Vamsas (Vatsa?), Kurus, Pāñcalas, Matsyas, Śūrasenas, Āśmakas, Avantis, Gandhāras, Kambojas. Varāhamihira's *Bṛhatsaṃhitā*, Baudhāyana-grhyasūtra I. 17, Kāmasūtra V. 6. 33-41, Bārhaspatya Arthasāstra (III. 83-117), the *Kāvyamīmāṃsā* of Rājasekhara (17th chapter) name numerous countries. This last divides India into five regions and gives the names of about 70 countries in the four directions but none from Central India. The *Bhāvaprakāśana* (pp. 309-310) gives a list of 64 countries and states that *Dakṣiṇapatha* (Deccan) is a fourth of *Bhāratavarṣa* and that in the *Tretā* and *Dvāpara* ages people afraid of being overwhelmed by ice came down to the south.^{179a} 56 countries are named in some *Tantra* works (vide 'Indian Culture' vol. VIII. p. 33). In the lexicon called *Valjayanī* of Yādavaprakāśa (11th century A.D.) edited by Dr. G. Oppert, over a hundred countries and capitals of some of the countries are named (in the *Bhūmikāṇḍa* and chapter on *deśa* thereof).

To constitute a *rāṣṭra* a territory of some size and a large population are required. There can hardly be a *rāṣṭra* of a few villages or a few hundred inhabitants. The boundaries of the numerous countries mentioned in the works cited above must have been fluid and must have changed from country to country owing to conquests.

In ancient India the modern sentiment of nationalism had hardly taken root. Writers speak of *rājya* (State) and of *rāṣṭra* (territory) as an element of *rājya*. They had no sense of nationality nor did they seriously work for national unity. The modern idea of a nation is more a question of feeling and sentiment than of objective fact. The State has been at all times a great co-ordinating agency, but as its boundaries were extremely variable in ancient India, the modern sentiment of nationality, of 'my country, right or wrong' hardly ever arose in India (except perhaps for over a century in *Mahārāṣṭra* in the 17th and 18th centuries and among the Sikhs). In the whole of *Hindu* India, there was no doubt a certain unity of religion, philosophy, literary forms and conventions of arts and forms of worship, and in reverence for holy places, but this did not make for a deep-seated and effective sentiment of nationhood or national unity.

^{179a}. वेदादुपे द्वापरे च हिमाकान्तिमवाप्नुना । वार्यं पार्यं विदुर्गते अकम्पे वसि-
नायधम् । भावप्रकाशन p. 309.

Most of the ancient sūtrakāras and smṛtis try to lay down the limits of the holy land of Āryāvarta and differentiate it from the lands of *mlecchas*. Vide H. of Dh. vol. II pp. 11-18. The Viṣṇu (II. 3. 1-2), Mārkaṇḍeya (55. 21) and other purāṇas wax eloquent over the importance of Bharatavarṣa and describe it as the land of action for those who want to secure heaven or final release or as the land where alone sin and religious merit were to be found (*karmabhūmīr-īyam sāraṅgam-apavargam ca gacchātām* or *tat-karma-bhūmīr-nānyatra samprāptiḥ puṇyapāpayoh* in Mār.). Manu (II. 20) manifests great pride in and love for the holy countries of Brahmāvarta, Kuruksetra, Matsya, Pāñcala and Śūrasena by glorifying the brahmanas of these countries as those 'from whom all men on this broad earth should learn the actions and usages appropriate to them'. Vas. I. 10 also says the same. Śāṅkha-Likhita (q. by Visvarūpa on Yaj. I. 2) hold that the country of Āryāvarta is endowed with high qualities, is ancient and holy (*deśa Aryo guṇavān sanātanaḥ puṇyakaḥ*). As however the smṛtis were composed at different times, embodied the usages of different provinces in India and as they provided for the observances of all those who followed the Veda, they do not generally lay emphasis on localities but rather on what they thought was common to all Āryas in India (*yat tu samānam tad vakṣyāmah*, as Āśv. gr. says). There was no doubt a great emotional regard for Bharatavarṣa or Āryāvarta as a unity for many centuries among all writers from a religious point of view, though not from a political standpoint. Therefore one element of modern nationhood viz. being under the same government was wanting. But it must be noted that from very ancient times there was always the aspiration among great kings and the people to bring the whole of Bharatavarṣa "under one umbrella". Even in the West the sentiment of nationality practically arose after the partition of Poland, and as a consequence of the French Revolution and of the Industrial revolution, which led manufacturing countries to search for markets and to exploit backward and less developed peoples. Vide Laaski's 'Grammar of Politics' chap. VI. Modern nationalism undoubtedly leads to great self-sacrifice and produces certain virtues of high value in the individuals that are fired by that sentiment. But the ideals of the modern nation States are not high, particularly in their treatment of other peoples and in their attitude towards less favoured States. The one aim of the leading politicians of modern nation States and most of the inhabitants of these States seems to be to raise the standard of

living of their citizens to a high level and to maintain it at that level even by exploiting and robbing weaker races and lands. This is not the place to discuss these matters further. Whatever the value of nationalism to the individuals fired by it may be, from the point of the welfare of the whole of mankind, modern nation States do not deserve to survive, unless the so-called progressive nation States are prepared to give up their racial pride, their spirit of grabbing and exploitation and to extend a brotherly hand to all struggling States to improve themselves in their own way and attain to higher standards of living without let or hindrance. It cannot be gainsaid that for several centuries in the past and also at the present moment all modern nation States have two moralities, one for their own nation and the other for their dealings with foreign States and races.

Some remarks must now be made about provincial and local administration. Each kingdom comprised *deśas* (countries) and subdivisions of *deśas*. The governor of a *rāstra* was called *rāstrapati* or *rāṣṭriya*. Vide p. 117 above about Pasyagupta having been the *rāṣṭriya* of *Surāstra* (Kathiawad) under Candragupta Maurya and Śānti 85.12 (which describes what the *rāṣṭriya* is to do).

According to the *Amarakośa* the words *deśa*, *rāstra*, *visaya* and *janapada* are synonyms. Epigraphic usage is not uniform about the dimensions of these. Sometimes *visaya* appears to be a sub-division of *deśa* (vide the words '*rāstrapati-visayapati-grāmakūṭa*' in I. A. vol. VIII. at p. 20 in the grant of *Calukya Tribhuvanamalla* in *śake* 999 and I. A. vol. XII pp. 247, 251 in the grant of *Rāṣṭrakūṭa Govinda* in *śake* 855). But in the *Hirahadagalli* plates (E. I. vol. I. p. 5) '*visaya*' occurs first and then '*rāstra*'; so it appears that there '*visaya*' is deemed to be larger than *rāstra*. According to the *Sahyādrīkhanda* (*uttarārḍha*, chap. 4) *deśa* is made up of 100 villages, *maṇḍala* is made up of 4 *deśas*, a *khanda* of 100 *mandalas* and the earth has nine *khandas*.¹⁸⁰ From the *Cambay* plate of *śake* 852 (930 A. D.), we see that *maṇḍala* was a sub-division of *deśa* (E. I. vol. 7 p. 26, at p. 40). From

180. शतग्रामो भवेदेको देशश्चत्वारि मण्डलम् । शतमण्डले भवेत्खण्डे नवखण्डाश्च
मेदिनी ॥ सङ्गाद्विषण्ड. उत्तरार्धे chap. 4: 'लाटदेशखेटकमण्डलान्तर्गतकाविकामहास्यान-
विनिर्णय' in E. I. vol. 7 p. 40; 'श्रीपुण्ड्रवर्मनसुक्तौ कीर्तीवर्णनियमे लोकलिकामण्ड-
लान्तःपाति ... ग्रामः' in E. I. vol. 14 p. 324.

the Bangarh grant of Mahipāla I (E. I. vol. 14 p. 324) and the Amgachhi plate of Vigrahapāla III we see that *maṇḍala* was smaller than *viṣaya* which again was a subdivision of 'bhukti'. The word 'bhoga' (which is similar in origin to 'bhukti') appears to be applied to a sub-division of *viṣaya* (which in its turn is a sub-division of *rāstra*) in the Bhamdak¹⁵¹ plate of Kṛṣṇarāja I dated śake 694 (E. I. 14 p. 121, 126) and also in the Jejuri plates of Vinayāditya in 609 śake (E. I. vol. 19 p. 62 at p. 64 where the word 'rāstrapati' does not occur). The *Mitākṣarā* on Yaj. I. 319 explains that only a king (*mahipati*) can make a grant of land and not a *bhogapati* (i. e. the officer over a *bhoga*). Another ancient word for a division of a country is *ābhūra* which occurs in the Rupnath Rock inscription and Sarnath pillar Edict of Aśoka (Corpus I. I. vol. I pp. 162 and 166), in the Nasik Inscriptions No. 3 and 12 (Govardhanāhāra and Kapurāhāra, E. I. vol. VIII pp. 65 and 82) and in the Karle Ins. No. 19 (E. I. VII. p. 64) where we have *Māmalāhāra*, modern *Māval* (in Poona District). For want of space it is not possible to pursue this subject here. For further information vide Dr. Fleet in J. R. A. S. for 1912 p. 707 and my paper on 'the Ancient Geography of Mahārāstra' (JBBRAS. vol. XXIV for 1914-1917 pp. 648-653). In the epigraphic records particularly of the Deccan and South India we come across names of territorial divisions to which small as well as very large figures (indicating the number of villages they comprised) are affixed: e. g. a group of twelve villages in Aparānta on the sea near Kalvivāna (modern Kelvem) is mentioned in the Sanjan plates of Budhavarasa (E. I. 14 p. 144 at p. 150), Nyāyapadra *saptadaśa* in Bhoja's grant in *śahānt* 1076 (E. I. 18 at p. 322), Kisukād 70 (E. I. 15 p. 73), Belvola 300 (in E. I. 13 at p. 40), Koṅkaṇa 900 ruled over by the Kadamba king Jayakeśi II (E. I. 13 pp. 298, 317), Tardavādi 1000 (E. I. 15 p. 25), Kuṇḍi 3000 (E. I. 13 at p. 18), Pratyandaka 4000 (E. I. III. p. 306), Karahāta 10000 (E. I. 13 p. 275), Banavāsi 12000 (E. I. 13 p. 179), Nalambavādi 32000 (E. I. 19 p. 187), Kavādīvīpa *sapādalakṣa* (one and a quarter lakh) in E. I. 13 at p. 299, the country of 7½ lakhs (in the Lakshmeshwar Ins. of Vikramāditya VI in E. I. 16 p. 31). Vide Dr. Fleet in J. R. A. S. 1912 pp. 707-710 as to the meaning of these figures.

151. राष्ट्रपतिविषयपतिभोगपतिपथुर्त्तल समज्ञापयति । E. I. vol. 14 p. 121 at p. 126 : सन्निवेष यथासंयध्यमानकान् राष्ट्रपतिविषयपतिप्राप्तिकृतमहत्संयुक्तकोषयुक्तकार्षिकारिकान् सनादिशति । E. I. vol. VII. p. 26 at p. 40.

Kaṇṭīya II. 1 says that in the kingdom groups of villages should be set up with a chief town or fort in each, a group of ten villages being called Sangrahaṇa, of two hundred villages being called Khārvatika, of 400 villages being called Drona-mukha, and in the midst of 800 villages¹⁸² there is the Sthāntya-

182. अष्टशतग्राम्या मध्ये स्थानीयं चतुःशतग्राम्या द्रोणमुखं द्विशतग्राम्याः सार्वादिषु वसवासीसंग्रहेण संवहणं स्थापयेत् । Kaṇṭīya II. 1. Vide Dr. Shamāstri's note on these. स्थानीय has a similarity in sound and meaning to modern *thānā*. Dr. Prān Nāth (in 'Study of the economic condition of Ancient India' p. 26) principally relying on a commentator of the Jain work called Prajñāpanopāṅga (which he misunderstands) holds that 'grāma' does not mean 'a village', but 'an estate or survey village which can pay 18 kinds of Government taxes'. The learned Doctor says that he consulted many Sanskrit lexicons, but did not find this interpretation in any one of them. That should have induced him to be cautious. But he makes the bold and facile assumption that 'lexicons were compiled from a literary view-point and are not of much assistance as far as the technical meanings of words are concerned'. His great authority, the Jain commentator, says 'ग्रामनिवेशेषु ग्रामादि । वसति बुद्ध्यादीन्मुनानि ग्रामः पवि वा मयः शास्त्रमसिद्धानामघातश-काणानि ग्रामः'. Dr. Prān Nāth's Jain authority is no better than lexicographers and their commentators. श्रीरस्वामी or Amara derives grāma as 'ग्रवते भूमिनिर्ग्रामः' i. e. the word ग्राम is derived from the root ग्रव. The Jain commentator first derives the word ग्राम from ग्रव and then from मय. Dr. Prān Nāth forgets that a fanciful or scholastic derivation is not a definition. The rest of the reasoning on the new meaning of grāma is on a par with this and cannot be examined in detail. A commentator expressly states (*ibid* p. 27) that he gives only the *vyutpatti* (etymology) of grāma, but Dr. Prān Nāth pays no heed to this. He has not correctly grasped the scholastic discussion in the commentary quoted on p. 27. He misunderstands the word 'samagrāmāḥ' in Yāj. II. 152. The Amarakosa expressly says that 'santa' and 'samāna' are synonyms. He is often very dogmatic without looking into all ancient and medieval authorities e. g. on p. 51 he charges Dr. Fleet with misinterpretation of a Jātaka text (*addha-tiyāni sāntāni*) which Dr. Fleet translated as 250, while Dr. Prān Nāth is sure that the meaning is '150'. He probably never noticed that so far back as the 2nd century B. C. the Mahābhāṣya had explained the word 'ardhatrītiya' as Dr. Fleet does (अर्ध तृतीयमेव or अर्ध तृतीयमनयो, vide Kiehnorn, vol. I. p. 426 on *vārika* 22 on Pāṇ. II. 2, 34). There is hardly any warrant for Dr. Prān Nāth's assertion that each grāma (as interpreted by him) contained only about five families and had only about 15 or 20 acres of cropped area (pp. 39-40). Kauṣ. (note 178) states that a grāma contains from 100 to 500 families. If the inscriptions so far published are carefully searched it will be found that grāma ordinarily meant a village in the modern sense and included several hundred acres of land. For example, in a grant of Pallava Yuvamahārāja Viṣṇugopavarman (I. A. vol. V p. 50).

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Manu VII. 114 similarly observes that in the midst of two, three or five villages the king should place a central post of guards called 'gulma' and another called 'saṅgraha' in the midst of a hundred villages. Manu VII. 115-117, Viṣṇudharma-sūtra III. 7-14, Śānti 87.3ff, Agni-purāṇa 223. 1-4, Viṣṇudharmot-tara II. 61. 1-6, Mānasollāsa II. 2. 159-162 (p. 43) require the king to appoint a hierarchy of officers for one village, for groups of ten, twenty, hundred and thousand villages, who are to report what is wrong within their jurisdictions that they cannot themselves remedy to the officer next in grade above themselves and Manu VII. 120 prescribes that a minister of the king should supervise the doings and conflicts of all these officers. The Edicts of Aśoka show that he had to employ a hierarchy of officers such as the mahāmātras, the yuktas and rājukas for the administration of his vast empire. A similar administrative system seems to have been continued under the Gupta Emperors. From the Damodarpur, Baigram and other plates (E. I. XV. p. 113, E. I. XVII pp. 345ff, E. I. XXI p. 78) it appears that the Provincial Governors were appointed by the Gupta Emperor himself and were called *uparika mahārāja*, that either the Governors or Emperors appointed District officers (*visayapati*) who were often called Kumāramātya, that the District officers were aided in their administrative work by a board of four advisers called *nagara-śreṣṭhin* (banker), *sārthavaṇa* (chief merchant), *prathamakuḷika* (chief of craft guilds) and *prathamakāyastha* (chief secretary), that the District officer had his

(Continued from last page)

very detailed and accurate boundaries of a village of 200 *nivartanas* are given. A *nivartana* was equal to a square of twenty *vāṇās* on each side, each *vāṇa* being equal to ten cubits; so that a *nivartana* covered an area of 40000 cubits (200 × 200) i. e. about 90000 square feet, while an acre is equal to 43560 square feet. Therefore the village referred to in the above grant was over 400 acres in extent. The Mahābhāṣya (on *vārtika* 3 on Pāṇ. I. 1. 7) has an interesting discussion on the several meanings of the word *grāma* in popular language viz. a number of houses (as in 'the *grāma* was burnt'), the village wall or ditch (as in 'he entered the *grāma*'), 'men' (as in 'the *grāma* had gone'), a village with its forests and bushes, with its boundaries (such as rivers and hills) and with embanked fields (as in 'a *grāma* was acquired'). 'ग्रामशब्दोच्ये बहवैः । अस्मिन् शाब्दासमुदाये वर्तते... अस्ति सारथ्यके ससीमके सस्थण्डिलके वर्तते । तद्यथा ग्रामो लम्ब इति । As in modern times villages are found named after trees the same was the case in the days of Pāṇ. and Patañjali शिरीषायामहुरभवी ग्रामः शिरीषाः तस्य ग्रामस्य वनं शिरीषवन्मन् । महाभाष्ये on पा. I. 2. 51 (vol I, p. 224.).

headquarters in a place called *adhiṣṭhāna* and had his several offices or courts (*adhikaraṇas*), and that in sales of lands revenue officers called *pustapālas* (keepers of records of rights) were consulted and had to report. In E. I. vol. XVII. pp. 345, 348 a copperplate of Kumāragupta I has '*grāmāṅga-kulādhikaraṇam*' which means an office having jurisdiction over 8 villages. Manu VII. 119 says that the officer over 10 villages was to have as his salary a *kula* of land and *kula* is here said to mean (by Kullūka) as much land as is ploughed by two ploughs having six oxen yoked to each. The Vaijayanṭi on Viṣṇu Dh. S. III. 15 says '*kulam haladvaya-karsanīyā bhūḥ*'. Śūkra (I. 191-192) states that the lord of one hundred *grāmas* is called *sāmanta*, an officer appointed by a king over one hundred villages is called *amūṣamanta*, one over ten villages is called *nāyaka* (compare modern '*naik*'). Manu VII. 61 and 81, Yāj. I. 322, Kām. V. 75, Viṣṇudharmasūtra III. 16-21, Viṣṇudharmottara II. 24. 48-49 say that the king should appoint as many *adhyakṣas* (superintendents) as are required for the several departments of the state, who are clever, honest and of good family. Kautīlya¹⁸³ II. 9 prescribes 'those who are possessed of the qualifications for *amātyas* (cited on p. 107 above) should be appointed, according to their abilities, as superintendents of the various departments and the king should constantly examine their work, since men are naturally fickle-minded and when appointed to do work exhibit like horses change of temper'. It is pointed out in works like the Viṣṇudharmasūtra III. 16-21 and the Viṣṇudharmottara II. 24. 48-49, Śānti 69. 29, that those who are highly devoted to dharma should be appointed to the ecclesiastical or judicial department, the brave ones to military work, those who are skilled to revenue work and those who are very trustworthy should be placed in charge of mines, salts, toll-gates, ferries, elephant forests.

Kautīlya in his 2nd *adhikaraṇa* exhaustively deals with the work done in 28 departments and the duties of their superintendents. He enters into very minute details about each and his work is encyclopaedic in character on this subject.

183. अमात्यसम्प्रदोषेताः सर्वाधपक्षः शक्तिः कर्मसु नियोज्याः । कर्मसु चेवां नित्यं परीक्षां कारयेज्जितानिपत्यन्मनुष्याणाम् । अन्वसधर्मोऽपि मनुष्याः निवृत्ताः कर्मसु विकृ-
रन्ति । कौटिल्य II. 9; धर्मिष्ठान् धर्मकार्येषु दूरान् संयानकर्मणि । निपुणान्पैकुलेषु सर्वत्र
च तथा ब्रूवीन् ॥ विष्णुधर्मोत्तर II. 24. 48. Vide a similar verse quoted by the
मिता on Ya. I. 322.

Kautilya's work became the authority on Government and several inscriptions mention officers appointed according to the section on 'adhyakṣapracāra', which is undoubtedly a reference to Kautilya's 2nd adhikaraṇa. For example, in the Belava plate of Bhojavarmadeva (E. I. vol. XII at p. 40) and in the Barrackpur grant of Vijayasena (E. I. vol. XV, p. 283) we have the words 'anyānśca sakalārājapādopajīvinodhyakṣapracāroktān ihākīrtitān cattabhata-jātyān janapādān ksetrakarāmāca'. It is not possible to do anything more than indicate very briefly the sphere of each *adhyakṣa*. The duty of the *sannidhātṛ* (II. 5) is to look after the construction of the treasury house, the store-houses for merchandise, for grain, for forest produce, for arms and of the jail. The *saṁāharṭṛ* (the Collector-General) is to exercise superintendence over the collection of revenue from forts, the rural parts, mines, embankments, forests, herds of cattle and roads for traffic (II. 6). The *saṁāharṭṛ*¹⁸⁴ has to divide (II. 35) the kingdom into four districts and to arrange the villages into three grades, viz. those that are exempted from taxes, those that supply soldiers and those that pay taxes in the form of grain, cattle, money, forest produce, free labour and other equivalents for taxes. It is the duty of the *gopa* to look after a group of five or ten villages under the orders of the *saṁāharṭṛ*. The *gopa* has not only to register the total number of the inhabitants of all *varṇas* in the houses that pay taxes and that are exempt in the villages, but also to keep a register of the number of cultivators, cowherds, merchants, artisans, labourers, slaves, biped and quadruped animals, of the amount of money, free labour, tolls and fines that are recovered, and the number of women, men, young and old persons, and the extent of their actions, occupations, usages, expenditures. The *sthānika* (in charge of each of the four districts) should look after his charge in the same way. The superintendent of records and accounts (*akṣapatalādhyakṣa*) should have the account office constructed with its door facing the north or the east, with rooms

184. Both the *saṁāharṭṛ* and the *sannidhātṛ* are mentioned as officers in the copperplate of Mahābhavagupta of Trikalīṅga (E. I. vol. VIII, p. 138 at p. 141 and E. I. vol. XI at p. 94). Sabara in his *bhāṣya* on Jaimini XII. 1. 28 refers to the *saṁāharṭṛ* coming with his own phalanx of subordinates 'यथा सेनापतिर्वैश्यवतेन सहायतः समाहर्ता निजेन वतेन राजा तु सर्ववैशेस्त्वैश्वर्यैव'. From Hiouen T'sang's account of his travels (Beal's 'Buddhist Records' vol. I, p. 78) we learn that each province kept a record of good and bad events.

(for the clerks) set apart and with shelves of account books well-arranged (II 7). This officer had to enter numerous matters in the accounts, recover the king's dues from the sureties of servants, to check embezzlement and to recover fines for loss due to neglect or fraud. The account year ended with the full moon of *Āṣāḍha*, the year being of 354 days and the salary for an intercalary month being separately paid. Among the duties of the Superintendent of records and accounts was the important one of noting in his register the dharma, method of judicial procedure and the usages of countries, villages, castes, families and corporations (*deśagrāmajāti-kulasanghātānam dharmavyavahāra-caritra-sainsthānam* *nibandha-pustakasthānā kārayet*). In II 8 Kautilya specifies forty modes of embezzlement by Government servants (to which a reference is made in the *Daśakūmaracarita* VIII). In II 9 he employs the picturesque figure that it is not possible to know exactly how officers appointed to the several businesses of the State extract wealth, just as fish always dwelling in water cannot be observed when they drink water. The superintendent of treasury (II 11) shall in the presence of qualified persons receive into the treasury gems, pearls, articles of great or small value and forest produce (like sandal wood, *aguru* etc.). The superintendent of mines and of government manufactories (II 12) must be proficient in the science of metals, mercury, liquids that ooze from the holes, caves and sides of mountains and hills. Under him are officers called *lohādhyakṣa* (who carries on the manufacture of vessels of copper and other metals), a *lakṣagādhyakṣa* (a superintendent of mint, who manufactures silver and copper coins for the State), a *rūpadarśaka*^{184a} (examiner of coins, who regulates the dealings with paṇas as a medium of exchange among the people and for stocking in the treasury), *khanyādhyakṣa* (who attends to conches, diamonds, pearls, coral and trade in them), a *lavanādhyakṣa* (superintendent of salt). The *suvarṇādhyakṣa* (the superintendent of gold) has to construct a goldsmith's office for the manufacture of gold and silver articles with a single door and four halls, to appoint a skilful and trustworthy goldsmith to have a shop in the centre of the road (II 13) and not to allow any one who is not an employee to

184a. Patañjali in the *Mahābhāṣya* on *vārtika* 4 on *Īn*, I. 4. 52 cites the example 'पदवति रूपतः कार्यावणम्'. *पदवति रूपतः कार्यावणम्* appears to mean one who can examine a coin or probably the same as *रूपदर्शक* in Kauṣ.

enter the goldsmith's shop. If any one so entered he was to be beheaded. The State goldsmith (II. 14) has to manufacture gold and silver coins for the citizens and rural inhabitants through artisans employed by him. The superintendent of the storehouse (II. 15) has to keep together the produce of crown lands, taxes from the country districts, accidental revenue, manufacture of rice, oil &c. The superintendent of commerce (*panyādhyakṣa*, II. 16) should keep himself acquainted with the demand or absence of demand for and the rise and fall in the prices of various kinds of merchandises produced on land or from water and brought by land or water routes. The superintendent of forest produce (*kūpyādhyakṣa*, II. 17) was to collect forest produce through guards of forest and Kautilya gives a long list of trees, varieties of bamboos, creepers, fibrous plants and rope-making material, drugs and poisons, skins of various animals, that came under this officer's care. The superintendent of armoury (*śyudhāgarādhyakṣa*, II. 18) was to employ experienced artisans to manufacture arms, wheels, machines, armour &c. required in battle or for the defence of forts, or for battering the cities of the enemy. The superintendent of weights and measures¹⁸⁵ was to get manufactured weights from half *māṣaka*:

185. The weights specified are: 10 seeds of *māṣa* or 5 *guṇjās* = 1 *suvarṇa-māṣaka*, 16 *suvarṇa-māṣakas* = one *suvarṇa* or *kārṣa*, 4 *kārṣas* = one *pala*, 88 white mustard seeds = one *rupyamāṣaka*, 16 *rupyamāṣakas* or 20 *śaibya* seeds = one *dharana*. The *Kālikā* on Pān. II. 4.21 furnishes the interesting item of information that weights and measures (probably in vogue in its day) were first introduced by the Nandas (*nandopakramāni mānāni*). The chief measures of distance given in II. 20 are: 8 atoms = one particle of dust thrown up by a chariot wheel, 8 particles = *likṣā*, 8 *likṣās* = a medium-sized *yūkā* (louse), 8 *yūkās* = *yava* (barley corn) of medium size, 8 *yavas* = one *āṅgula*, 12 *āṅgulas* = *vitasti*, 2 *vitastis* = *aratni* or one *prājāpatya* hand, 2 *vitastis* plus 4 *āṅgulas* (called *dhanurgraha*) = one *hasta* used in measuring pastures and cubic measures, 4 *aratnis* = *danda* or *dhanus* or *nālikā-pauruṣa*, 10 *dandas* = *rajjū*, 3 *rajjus* = *nivartana*, 1000 *dhanus* (or 2000 acc. to another reading) = *goruta*, 4 *gorutas* = one *yojana*. A *nivartana* was probably so called because it represented a day's ploughing by a team of eight or six oxen (from the root *art* with *ni*), meaning the area from which they stopped after a day's work. Vide H. of Dh. vol. II. p. 859 note 2021 for *nivartana* and *gocarna*. The extent of the *nivartana* differed acc. to different authorities. The *Matsya* said it was 30 *dandas* square, each *danda* being of the length of seven *hastas*, while *Śālitapa* held the *danda* to be of 10 *hastas*. The *Lilāvati* (I. 7) held that a *nivartana* was 20 *vaṁśas* square, each *vaṁśa* being of 10 *hastas*. According to the lexicon *Vaijayanti*, in Kosala the *yojana* was of four *gavyūtis*, while

onwards up to one hundred suvarṇas, weights being made of iron or stones found in the Magadha country and the Mekala mountain. The superintendent of tolls (sulkādhyakṣa, II. 21) was to erect near the principal gate of the capital a toll-house and its flag and when traders arrived with merchandise make four or five toll-collectors take down their names, whence they came, what merchandise they brought and whether it bore seal-mark. In II. 22 Kautilya specifies various rates of tolls for imports and exports. The superintendent of weaving (II. 23) was to employ qualified persons to make threads, coats (of armour), cloths and ropes and he was to employ for cutting wool, fibres, cotton, hemp and flax, widows, cripple women, girls, ascetic women paying off fines by doing work, mothers of prostitutes, old women servants of the palace, *devullāsas* (temple girls) who have ceased to do temple services. This superintendent was charged with the task of providing work for women who do not leave their homes, the wives of persons who have gone abroad, women who are cripple or unmarried and who have to work for their own maintenance. He was to give to them spinning work through the maid-servants in his department. If he stared at their faces when they came to exchange their work for wages or spoke to them on any other matter he was fined in the first amercement. Thus the State helped home or cottage industry. It is to be noted that he had large powers of levying fines and

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in Magadha it was only equal to two gavyūtis (last verse of *śulkaśāstra* in *bhūmikhanda*). Kau. gives *hasas* of various lengths for various purposes. Compare Manu VIII. 132-134, Viṣṇudharmaśāstra IV. 1-7, Yāj. I. 362-363, Nārada parivīṣṭa 57-60, Bṛhatsamhitā, 57. 1 ff, Vāyapurāṇa 101. 118 for some of these, which differ in some details from Kautilya's statements. Kau. (II. 20) states the duration of a *nādikā* to be the time required for the passage of one *āṇhaka* of water from a pot through an aperture of the same diameter as a wire of 4 *āṅgulas* in length and made out of four *suvarṇamāsakas*. 3 *nādikās* are equal to a *muhūrta* and 15 *muhūrtas* are equal to a day or a night. In II. 19 he gives measures of corn as follows:—4 *kudumbas* = *prastha*, 4 *prasthas* = *āṇhaka*, 4 *āṇhakas* = *droṇa*, 16 *droṇas* = *khāri*, 20 *droṇas* = *kumbha*. The *droṇa* differed for various purposes. Vide above (p. 124 note 165) for a quotation from Mī. on Yāj. III. 274. Hemadri, *vratakhanda* pp. 51-57, gives quotations from various sources for measures of time, corn &c. These measures were different in different countries and at different times. The Līlāvati (of 12th century A.D.) I. 7 speaks of the *khāri* in Magadha being equal to 16 *droṇas*. Vide n. 165 above and H. of Dh. vol. II, p. 381 n. 2033 and L. D. Barnett's 'Antiquities of India' (pp. 206-210) for tables of weights and measures.

awarding bodily punishments e. g. if a woman refused to work after receiving the wages he could cut off her thumb (? or bind up her thumb with the index finger so as to form a pair of tongs). The superintendent of agriculture (*sitādhyakṣa*, ¹⁸⁶ II. 24) himself knowing or assisted by those who know the science of agriculture and the *Āyurveda* (the ancient lore) of trees was to collect at the proper times all kinds of corn, flowers, fruits, vegetables, bulbs, hemp and cotton seeds and to employ slaves, labourers and prisoners who worked to pay off fines they could not pay, to sow seeds on crown lands. In this chapter he makes interesting remarks about the extent of rainfall viz. the rainfall in a *jāhṇala* country (defined above at p. 132) is 16 *dronas*, in *amūpa* (very moist) countries 24 *dronas*, 13½ *dronas* in the *Āsmaka* country (modern Khandesh and part of Berar), 23 *dronas* in the *Avanti* country (round about modern Ujjain), an immense quantity in the *Aparāntas* (west coast of India) and the *Himālayan* regions.

The superintendent of liquor was to carry on the traffic in liquor and ferments in the capital, the other parts of the country and in army camps by employing men familiar with them, he was to impose a fine of 600 *panas* if any one other than the manufacturers, licensed vendors and vendees sold or purchased liquor, he was not to allow liquor-shops to be opened close to each other, he was to see that liquor was sold in small quantities such as ¼ or ½ of a *kaṇṭhika* or a half *prastha* to persons of known character in order that (lit. for fear) workmen employed should not cause loss through carelessness, that *ūryas* might not violate the rules of good conduct and that desperadoes should not commit indiscreet acts. Śukra was even more strict as regards

186. *Sitā*, according to the *Amarakośa*, means the 'lines or furrow made by the ploughshare'. Therefore Kaṭilya appears to employ the word '*sitā*' in the sense of 'land that has been cultivated'. Prof V. K. Ramchandra Dāshitar (in '*Hindu Administrative Institutions*' p. 369) is not right when he explains *सीता लाङ्गलपद्धतिः* (of Amara) as 'methods and means connected with the plough'. *Paddhati* only means the line or furrow made in the field by the ploughshare. Keiraswāmi explains as *रपति भुवे सीता हललेखा*. In II. 15 Kaṭilya himself explains '*sitā*' as the collection of grain brought in by the superintendent of agriculture '*सीताग्रहणोपनीतः सस्यवर्गकः सीता*'. The *sitādhyakṣa* appears to have been concerned with crown lands, while the share of crops leviable on lands of private ownership was called '*hali*'. Both these were the concern of the *samāhartā* as stated in V. 1. (where *rāstra* is said to include *sitā*, *bhāga*, *bali*, *kāra* &c.). When in II. 15 *sitā* and *rāstra* are separately mentioned that is on the analogy of the maxim of *brāhmaṇa-āśramaṇa* or of *gobalivārda*.

wine, as he did not allow any one to drink wine in the day-time (IV. 4. 43). The superintendent of slaughter houses (*sūnādhyakṣa*, II. 26) was entrusted with the power to regulate the killing of animals for meat and was to impose the highest amercement on those who trapped or beat or killed deer, cattle, birds or fish which were declared to be under State protection or that dwelt in protected forests. The superintendent of nautch-girls (*ganikādhyakṣa*¹⁸⁷) is dealt with in II. 27. The topic of *veśyās* has already been treated of in H. Dh. vol. II pp. 637-639. Kaut. says that a *ganikā* was to be employed for a salary of one thousand panas, whether she was born in a prostitute's family or not and she was to possess beauty, youth and accomplishments (i.e. the 64 *kalās* enumerated in Kāmasūtra I. 3. 16). Kaut. prescribes that, if she left the country or died, her daughter or sister took her place and estate or her mother could substitute some other *ganikā* in her place; when none of these existed the king took her wealth and her son did not inherit her wealth. A *ganikā* could purchase her freedom by paying to the king 24000 panas as ransom. She was to hold the umbrella, the golden pitcher and the fan for the king when he was seated on the throne or in a chariot or in his palanquin. There were grades among the *ganikās* as best, middling and inferior and salaries differed by a thousand. The sons of prostitutes were to be the chief actors on the royal stage. It appears from these provisions that the *veśyās* were more or less slaves. The superintendent of ships (*nāvādhyakṣa*, II. 28) was to look after the passage of ships not only over the seas and at the mouths of rivers, but also over lakes and rivers in the *sthāniya* (vide above p. 140) and other sub-divisions of the kingdom. Kaut. prescribes that villages on the sea-shore and river banks were to pay a fixed tax, fishermen were to render a sixth part of the haul of fish as fees for fishing licenses and merchants were to pay the customary tolls levied in port towns. This superintendent was to request the ships that touched at a harbour on their voyage to a distant port to pay the toll, he was to destroy pirate vessels bound for the country of an enemy as well as those that violated the usages of the port. The superintendent of cattle (II. 29) was entrusted with the rearing,

187. अभिरक्षुचित्ता वेद्याः शीलस्यहृष्यान्विताः । लभन्ते गनिकापञ्चं स्थाने च जन-
संभवे ॥ पूजिता सा सदा राजा हृष्यन्ति च संतुलाः । गार्गनीयामिष्यन्ता च लक्ष्यन्ता च
जायन्ते ॥ कामसूत्र I. 3. 20-21. This shows that every *veśyā* was not a *ganikā*,
but only one that was honoured for her accomplishments (in 64 *kalās*) and
who became the cynosure of all eyes.

preservation and care of cows, bulls, buffaloes and the dairy produce. The superintendent of horses (II. 30) was to record the breed, age, colour, marks, groups and places of origin of horses, which were to be classified as those kept in salehouses for sale, those that were recently purchased, those captured in battles, those that were pledged and those temporarily kept in stables &c. Kaut. notes that the breed of horses from Kāmbhoja, Sindhu (modern Sindh), Aratta (western Punjab) and Vanāyu (North-west of India) countries are the best of horses, Bāhlika (modern Balkh), Pāpeya, Sauvira (eastern Sindh and western Rajputana) and Taitila breeds are of middle quality and the rest are inferior. The superintendent of elephants (II. 31) had to take steps to guard elephant forests and supervise elephants that were in stables, the catching, training and feeding of them, their accoutrements &c. Kaut. devotes one chapter (II. 32) to the training and classification of elephants and medical treatment when they fell ill. The superintendent of chariots and that of infantry (II. 33) have the charge of the chariot department and of the six classes of infantry respectively. The superintendent of passports (*mudrādhyakṣa*) issued passes to inhabitants of the country or foreigners for entering into or going out and the superintendent of pastures (II. 34) was to see the passes and devote himself to the care of pastures. Kautilya provides that a pass (*mudrā*) was to be given on payment of a *māsaka*, that one could enter into or go out of a country only when one had a pass, that a person who entered without a pass was to be fined twelve panas and that the superintendent of pastures and his men were to examine whether persons not going by the royal road but through pastures had a pass or not and that the superintendent of pastures and his men were to convey the approach of thieves and enemies by beating drums and blowing conches and were to send messages about the entrance of enemies into pastures by means of domesticated pigeons carrying letters bearing the official stamp or by means of smoke and fire. The *nāgaraka* (the mayor of the capital or cities or the chief of the police in the capital) was to look to the affairs of the capital (or the big cities). A *gopa* (under the *nāgaraka*) was to superintend a group of twenty or forty families in the capital and an officer designated *sthānika* was to be in charge of each of four wards into which the capital was to be divided. Yāj. II. 173 mentions an officer called *sthānpāla* in connection with the finding of lost goods who appears to be the same as *sthānika*. The *gopa* and *sthānika* had to keep a register of the caste, gotra,

name and occupation of the men and women in their districts and also of their income and expenditure. Managers of charitable institutions had to send information to them about the heretics and travellers arriving to reside therein. Numerous rules about reporting and punishments for various defaults and wrongs are laid down, which are passed over. Manus VII 121 and Śānti 87. 10 also provide for the appointment in each city (in the kingdom) of a high officer, who was to superintend all matters affecting the city and who had ample powers of restraint and coercion. Many of the superintendents mentioned by Kautilya occur under the same names in the Kāmasūtra e.g. gavādhyakṣa, sūtrādhyakṣa, nāgaraka (explained by the comment as dandapāsika), paṇyādhyakṣa (in V. 5. 7-10). Vide E 1, vol. 15 pp. 127-128 for a statement on the provincial administration under the Guptas.

As regards the emoluments of the officers in charge of a village, ten villages &c. Manus (VII 118-119) has some interesting rules: 'The headman of a village should obtain (as his emoluments) those articles which the villagers have to furnish every day to the king viz. food, drink, fuel and the like. The officer over ten villages should enjoy one *kula*¹⁸⁸, that over twenty villages should enjoy five *kulas*, the superintendent of a hundred villages should receive the revenue of one village and the high officer over a thousand villages should enjoy (the revenue of) a town. All this, as Medhātithi says, is only approximate and recommendatory and was not literally followed, but

188. The word 'pratyaham' (every day) excludes taxes on fields that are levied once a year or taxes levied on particular occasions only; while the words 'food, drink and fuel' exclude cattle, money &c. The word 'kula' appears to be used as a technical term. It may mean as much land as would be required for the maintenance of a family. But there is another sense given by the commentators of Manus. Sarvajña-Nārāyaṇa quotes a text that *kula* means 'two halas'. He and Kullūka quote Hārta to the effect that a plough (yoked acc. to dharma) is one of eight bullocks, one of six bullocks is employed by those who want only bare maintenance, householders employ one of four bullocks, while those who in their greed want to incur heavy sin employ a plough with two bulls only. So by *kula* is meant as much land as can be ploughed with two ploughs to which either 8, 6 or 4 bullocks are yoked. That 6 or 8 or 12 oxen were yoked to the plough is stated in Atharva VI. 91.1 and Tai. S. V. 2. 5. 2. इदं तु द्विगुणं कुलमिति वचनाद् द्वय्यां हलार्थं वा कृष्ये भूतां युजीतेत्यर्थः। हलमानं च-अद्यावत् धर्महलं यद्वयं जीवितार्थिनाम्। अहर्षं सुहृत्प्राप्तौ द्विवर्षं ब्रह्मप्रातिनामिति हारीशोक्तम्। धर्महलं यावत् सुहृत्प्राप्तौ वा। सर्वज्ञनारायण on Manus VII. 119.

only means that a salary commensurate with the position and responsibilities of each officer should be received by him. Vide Śānti 87, 6-8 for rules similar to Manu's (where the officer over a thousand villages gets as his salary the revenues of a śākhānagara). Kautliya (In V. 3) sets out the salaries of many officers and servants as follows: the salary paid to the chief mantrin, purohita and a few others has been already stated above (p. 120); the dauvārika, the superintendent of the harem (antar-vamśika), the praśāstr, the samāhartṛ and the sannidhātṛ were to receive 24000 panas; the princes (other than the crown prince), the nurse (mātr, mother?) of the princes, nāyaka, the superintendent in charge of justice (or commercial transactions?) in the capital (the pauravyāvahārika), the superintendent of royal manufactories (karmāntika), the members of the council of ministers, the rāṣṭrapāla (governor of a province), antapāla (the guardian of the borders) were to receive 12000 panas; the salary of the heads of śrenis (the military corporations?), the heads of the elephant army, cavalry, and chariot army, and the pradeśtr was 8000 panas; the superintendents (below the commanders) of infantry, cavalry, chariots and elephants, of the forest produce and elephant forests will each receive 4000; the chariot driver (anika), the army physician, the trainer of horses, carpenters, *yonipoṣaka* (?) will receive 2000; the foreteller (the reader of omens), astrologer (who finds auspicious times for undertakings), the reader of purāṇas, the sūta, māgadha (bard), the assistants (paruga) of the purohita and adhyakṣas will receive 1000; trained foot-soldiers, the accountants and scribes will receive 500; musicians 250, but trumpet-blowers will receive 500; artisans (*kāra*) and craftsmen (*śilpin*) 120; servants in charge of bipeds and quadrupeds, workers doing miscellaneous things, attendants near the king, bodyguard and the officer procuring free labour (*viṣṭi*) will receive 60; those appointed to do piece work (*kāryayukta*, v. l. *āryayukta*), the elephant driver, boys (*mānavaka*, a page?), mountain-diggers, all attendants, teachers and learned men shall receive honorarium (*pūjāvetana*) according to their merit from 500 to 1000; charioteer of the king 1000; spies of the five sorts (vide above p. 129) will receive 1000; the village servants (like washer-man), the spies of the type of sattrin, desperado, poisoner and ascetic women will receive 500; the wandering spies (vide above p. 130) three hundred or more according to the labour involved. The superintendents in charge of a group of hundred or a thousand (servants) were to regulate the subsistence (*bhakta*), cash salary, the perquisites,

the appointment and transfer of those under them. But there shall be no transfer of those who are the king's personal servants and of those who are appointed to guard forts and the country parts. The Śukranītisāra (I. 211) emphasizes that salaries should be in paṇas, that a king should not make a gift even of a finger-breadth of land as emolument to any servant, but that if he does give land, it should be held only for the life-time of the officer¹⁸⁹. Kautīlya (in II. 1) prescribes that lands may be granted as emoluments to superintendents (of the various departments), the accountants, to officers called gopa and sthānika, to officers in the army, physicians, horse-trainers, but without power to sell or mortgage. Śukra II. 117-204 mentions numerous officers of the army, the treasury &c. Śukra IV. 7. 24-27 sets out the salaries of officers, when the king's income is one lakh of *mudrās* a year. Kauṭ. provides for pensions and gratuities. He says 'the sons and wives of those that die while on duty shall get subsistence and wages. Young children, aged persons and ailing persons related to the (dying) officers shall be shown favour. On occasions of funerals, sickness or child-birth the king shall bestow money and honours on them'. The Mahābhārata (Sabhā. 5. 54) prescribes¹⁹⁰ that it is the duty of the king to support the wives of those that meet death or calamities in the king's service. Śukra II. 406-411 contains very modern-looking rules about sick-leave, casual leave, pension after 40 years of service &c.

The above provisions from Kautīlya's work show how States in ancient India engaged in almost all the activities of modern States, had an equally complicated machinery of administration and an army of high and low officers. It will also be noticed how, as in India at present, comparatively very high salaries were paid to ministers and heads of departments as compared with the salaries of clerks (e. g. the ordinary clerks received five hundred, while the chief minister and samāhartr, the

189. न दद्यात्स्वयं सुतमेति धुनेः स्वयन्निवर्तनम् । तुर्यर्धे कल्पयेद्वापि पावद्वाहस्तु
जीवति ॥ सुतोऽप्यहोरात्रं विदुर्मेघ सदेव हि । आरामार्थं सुधार्थं वा दद्यात्स्वयं कुडुम्बिनम् ॥
शुकनीतिसार I. 211-212.

190. कश्चिद्वायन्मनुष्याणां तवार्थं सुपुत्रीपुत्राय । यस्मिन् चान्मुपेतानां विभर्षि
भरणार्थम् ॥ सभा 5. 54 : पादुहीनां भूतिं स्वार्थं दद्यात् वैमानिकीं ततः । पञ्चवत्सरभूत्ये तु
न्यूनधिकं यथा तथा ॥ वाय्मनिकीं तु वीर्यान्तं तदुत्तरं न च कल्पयेत् । मेघ पक्षार्थमात्रेण
हस्तप्राप्त्यापि वै भूतिः ॥ ... चत्वारिंशत् समा नीताः सेवया येन वै रुपः । ततः सेवां विना
तस्मै भूत्यर्थं कल्पयेत्सदा ॥ ... स्वमितां विनष्टां हस्तपुत्रे तदुत्तरं वहेत् । पावद्वाहोत्पन्ना
पुत्रपुत्रान् वृद्धा भूतिं वहेत् ॥ शुकनीति II. 406, 407, 410, 413.

collector-general, received respectively 48000 and 24000 i. e. 96 and 48 times as much respectively. If all the different officers mentioned in the works on dharmasāstra, arthasāstra and in inscriptions be collected together, they will make a formidably long list. A list from one inscription is set out below as a sample.¹⁹¹ Vide Vogel's 'Inscriptions from Chamba' pp. 120-136 for explanations of about 30 titles of officers occurring in the inscriptions.

A few words must be said about local administration. The word *grāma* occurs even in the Rgveda. In Rg. I. 114. 1 the poet offers his praise and prayer to Rudra so that he hopes that 'all bipeds and quadrupeds may fare well and all beings in this village may be free from disease and may enjoy prosperity'.¹⁹² In Rg. V. 54.8 'heroes (or men) conquering grāmas' are mentioned (*grāmajito yathā narah*). In Rg. X. 62, 11 Manu is styled 'grāmani' and the bestower of a thousand (cows?) and in Rg. X. 107. 5 it is said that the 'grāmani who is endowed with (or dispenses) daksinā (cows or wealth) walks in front (of the village people)'. In the Tai. S. II. 5.4.4 it is said 'the prosperous are three indeed, viz. the learned brāhmaṇa, the village headman (*grāmani*) and the *rājanya* (warrior)'.¹⁹³ In the Tai. Br. I. 1.4.8, the consecration of fire for a vaiśya sacrificer is made with the mantra 'manostvā grāmanyō vratapate vratenādadhāmi' (where Manu is styled *grāmani*). In the Śat. Br. V. 4. 4. 19 the *grāmani* is said to be stronger than his co-sharer (*sajata*). Vide S. B. E. vol. 41 p. 111. We saw above

191. In the Nāhati grant of Ballālasena of Bengal in E. I. vol. 14 p. 156 at p. 160 we have one of the longest lists of high and low officers. 'परमेश्वर-परममहाराज-महाराजाधिराज-अमरवृद्धालसेनदेवः कुमारी समुप-सप्तशेखराज-राज्यवक-राज्ञी-राणक-राजपुत्र-राजामात्य-पुरोलित-महाधर्मोध्यक्ष-महासन्धि-विमलिक-महासेनापति-महासुव्रतधिकृत-अमरवृद्ध-वृद्धपुत्रिक-महासुव्रतलिक-महासन्धि-महामौलिक-महापुल्लिपति-महागणपथ-दीक्षाधिक-चौधुराणिक-नीचल-हस्तवक-मोहलि-राजाविकारि-व्यापुत्रक-गोमलिक-दण्डपाशिक-दण्डनायक-विषयपरचाद्विगण्यांश्च सकलराज-पादोपजीविनीऽध्यक्षप्रचाराकृतानिदाकीर्तितान् चतुर्भुजजतीयान् जनपदान् क्षेत्रकरांश्च बाह्यजान् बाह्यजोषरान् पचाहं मानयति बोधयति समादिशति च । The word 'adhyakṣapracāroktān' apparently refers as said above (p. 143) to the section II on the activities of adhyakṣas in Kauṭilya. Vide appendix for a somewhat exhaustive list of officers mentioned in dharmasāstra and arthasāstra works and in inscriptions.

192. यथा शनसत्रं विषदे चतुष्वदे विन्धे सुहृदं ग्रामे अस्मिन्नातुराय ॥ अ. I. 114. 1.

193. यत्रो वै गतमिवाः शुश्रुवान् ग्रामणी राजन्यस्तेषां महेन्द्रो देवता । वै. सं. II. 5. 4. ४.

(p. 111) that among the *raṁins*, grāmanī (the village headman) was one. Grāma did not necessarily mean a village but may have been applied to a town (though not a capital). The headman of a village was called grāmanī, grāmika or grāmādhīpati (in Manu VII 115-116, Kauṭ. III 10), grāmakūṭa (in inscriptions e.g. E. I. vol. VII p. 39 of śaka 852, E. I. vol. VII p. 183, 188) and Paṭṭakila, modern Patil (in Ujjain plates of 975 and 1023 A. D. in I. A. vol. 6 p. 51, 53, vol. 18 p. 322 grant of Bhoja in *śamvat* 1076, I. A. 16 p. 254, E. I. vol. XI p. 304, 310 of *śamvat* 1176). In an inscription of the 13th century from the Poona District we have the form 'paṭṭela' (E. I. vol. VII at p. 183). The word 'gāvunda' for a village headman in the Canarese Districts is derived from grāmakūṭa (E. I. vol. VII p. 183). Paṭhīnāsī¹⁹³ quoted by Aparārka p. 239 states that the food of a grāmakūṭa could not be partaken by a brāhmaṇa. The Gāthāsaptasatī frequently refers to the great influence of the grāmanī and the love adventures of his son in the village (I. 30-31, VII 24). The Kāmasūtra states (V. 5.5) that the young son of a grāmādhīpati had certain women of the village at his beck and call.¹⁹⁴ According to the Śukranītisāra I 193 a grāma (village) is one krośa in extent and yields a revenue of one thousand silver karsas, while half a village is called *pallī* and half of pallī was *kumbha*. Hemādri in Dśnakhaṇḍa (p. 288) quotes from the Mārkaṇḍeya-purāṇa definitions of pura, kheṭa, kharvaṭa and grāma. Yāj. II 167 makes a distinction between grāma, kharvaṭa and nagara (town) as regards the extent of the pasture lands to be preserved round them. Baudhāyana Dh. S. II 3. 58 and 60 condemns residence in a city for a religious brāhmaṇa where the body is covered with dust which enters one's mouth and eyes and recommends for residence a grāma abounding in water, fuel, fodder, fuel-sticks, kuśa grass, flowers, which is full of well-to-do people, endowed with industrious people, where the majority are āryas and which cannot be entered by robbers. In the Sabbāparva 5.84 five officers of a village are referred to. It appears that from being a very high officer (a *ratnīn*) in Vedic times the grāmanī was reduced in his influence, came to be appointed by the king alone and the office became hereditary and could be given permanently. Vide

193. पैठीनसी : सांख्यारिकवाण्टिकग्रामकूटाक्षं विषयम् । अपरार्क p. 239.

194. ग्रामाधिपतेराहुककस्य हलोत्पदुत्तिपुत्रस्य पुनो ग्रामीणयोगिनो वचनमात्रसा-
ध्यास्ताश्चर्यम् इत्युपचक्षते विदुः । कामसूत्र V. 5. 5.

E.I. vol. VII, p. 177, 188, 189¹⁹². The Śukranitisāra (II 120-21) states that there were to be six officers in a village and (II 428-29) prescribes their caste, viz. sāhasādhipati (i.e. a magistrate to deal with wrongs involving force) was to be a kṣatriya, grāmanetr (the headman) a brāhmana, bhāgahāra (the person collecting the state land revenue) a kṣatriya, lekhaḥa (a scribe, corresponding to the modern *kulkarni* in the Deccan) should be a kāyastha, śulka-grāha (the toll-gate keeper) a vaiśya, pratihāra (the guard at the gate of the village wall) a śūdra. Śūkra (in II 170-175) sets out their duties. The headman was to be alert in protecting the villagers like their parents from thieves, robbers and from the State officers; the bhāgahāra was to devote special care to the tending of trees; the lekhaḥa was to be skilled in accounting and proficient in several spoken languages; the pratihāra was to be of strong body, proficient in arms, humble and to call the villagers with the respect due to each; and the toll-gate keeper was to levy tolls in such a way that sellers did not incur loss of capital spent by them. From Kaut. III 10 it appears that the village headman had the authority to inflict fines in certain cases e. g. when the headman (grāmika) had to travel on some business of the whole village the villagers were to accompany him by turns, but if they failed to do so they had to pay a fine of one pāṇa or a half pāṇa. Similarly, if a villager does not co-operate in the getting up of a show (prekṣā) in the village, he or his people would not be allowed to see the show and he was to be fined if he clandestinely saw it. In villages, particularly in Karnaṭaka and South India and in brahmadeya grants (to learned brāhmanas) the village assemblies (sabhā) carried on local administration. From the Kotavumachgi Inscription of Calukya Vikramāditya V dated śaka 934 (1012 A. D.) it appears that Ummachige was a great educational centre in the 11th century and 104 Mahājanas of the village were entrusted with the proper conduct of worship in the temple, the imparting of education, the feeding of ascetics, the supply of water to the village and the punishment of criminals (E. I. vol. 20 p. 59). Vide Gopalan's 'History of the Pallavas of Kāñci' pp. 93, 153-157 for the working of the village assemblies (sabhās) from the 9th century onwards, but as he observes (p. 154), 'we do not know the nature of the rules that regulated their working, their exact sphere of action and their

192. अस्य ग्रामरूप ग्रामकूटस्थं कल्लाम्बात्मजकुतुमावुपाय दत्तं साधनम् (E. I. VII p. 177 at p. 188 (grant of Eastern Calukya Amma dated 945 A. D.).

relation to the central government.' An inscription of king Parāntaka I (907-947 A. D.) at Uttaramerur deals with several classes of village committees that were appointed by vote (Annual Report of Archaeological Survey of India, 1904-5 pp. 131 ff). Five committees, viz. annual committee, garden committee, tank committee, gold committee (for currency or for collecting taxes in cash), *pañcavāra* committee, are described and reference is made to a sixth called 'justice committee' and the mode of election and the qualifications and disqualifications of members are described in detail (pp. 142-145). Prof. Nilkanth Sastri in 'Studies in Cola History' (pp. 131-175) publishes the text of two Parāntaka Inscriptions with English translation and exhaustive notes. Vide also E. I. vol. 22 p. 5 for resolutions of the sabhā at Manur to be followed in future meetings, the qualifications in property, education and character of the members &c., E. I. vol. 24 p. 28 about the regulations of sabhā from two Uttaramallūr Inscriptions and E. I. vol. 23 p. 22 for a note on the *pañcavāra* committee. For village communities as described in Buddhist works in the 7th century B. C., vide Rhys Davids in 'Buddhist India' pp. 45-51. It appears from Pāṇini and the commentary *Kāśikā* thereon that certain craftsmen were attached hereditarily to the village, were probably paid a certain part of the crop produce yearly for their services and corresponded to the modern village servants (called the twelve *bahūtedārs*) in the Deccan. For an account of these *bahūtedārs*, vide Grant Duff's 'History of the Marathas' (Bombay ed. of 1863, vol. I pp. 23-27). For example, Pāṇini (VI 2. 62) teaches the accent of a compound word formed from 'grāma' with another word denoting 'silpīn' (craftsman), such as *grāmanāpita* (village barber) or *grāmakulāla* (village potter), which are two examples given by the *Kāśikā* on this *sūtra*. From Pāṇini V. 4. 95 ('grāmakautābhyām ca takṣaṇaḥ') it may be inferred that a carpenter also was a village servant as in modern times in the Deccan. *Bṛhaspati*¹⁹⁶ contains very

196. ग्रामअभिनिवानी च संकृतः समपक्रिया । पाथाकाले तु सा कार्या धर्मकार्ये तपैव च ॥ इति जपः पञ्च सा कार्याः समूहानिवादिनाः । कर्तव्यं वचनं तेषां ग्रामअभिनिवानीनां ॥ समापयदेवग्रहणायामासमस्तकृतिः । तद्वानाधद्विद्यायां संस्थाने पञ्चनक्रिया ॥ कुलापननिरोधे च कार्यमस्याभिरक्षणः । पथैवलेखितं पथे धर्म्यां सा समपक्रिया ॥ पाठनीया समस्तस्तु यः समर्थो निमंत्रदेह । सर्वस्वहरणं दुष्टस्तस्य निवर्तनं दुराह ॥ इहस्पति quoted by अपराध pp. 792-93, सूत्रिचः II. 222-223, च. प्र. p. 332. The latter reads कुलापननिरोधश्च and states that कल्पवृक्ष read कुलवापननिरोधश्च meaning 'starting water courses and stemming them'. अपराध omits the half कुलापननिरोधे च &c. The word कुला is variously explained by the digests.

important information about local administration in villages. A compact formed among villages, guilds and corporations (*gana*) is called a *samaya* (agreement); such an agreement must be observed in times of distress and for acts of dharma. Two, three or five persons shall be appointed as advisers of groups; their advice shall be followed by the villagers, the guilds, the corporations and others. Examples of agreement as to times of distress are: When there is drought, there may be a compact that for the performance of a sacrifice to the planets or the like each field or house should contribute so much money or when there is trouble from robbers, each house should send one able-bodied and armed man. Then examples are given by Brhaspati himself about acts of dharma. The village people should put down in writing what work they are going to do, such as the repair of a house for their assembly, a shed for distributing water to travellers, a temple, a tank or a garden, the performance of the necessary *samskāras* (*upanayana* or funeral rites) of the poor and helpless, gifts for the performance of sacrifices, prevention of famine-stricken groups of families from coming. Such conventions would be proper and should be respected by all the villagers. Whoever being able to carry out such agreements violates them should be punished with loss of all wealth and banishment. Brhaspati further says¹⁹⁷ that the heads of families, guilds and *ganās* and the inhabitants of towns and forts may pronounce the two punishments of reprimand and condemnation against wrong-doers and may also excommunicate them and the punishments and favours declared by them according to rules should be approved of by the king, since such power is regarded by the sages as delegated to them. For ejecting out of the village one who is not guilty of theft or adultery with another's wife the village headman or the village was liable to pay, according to Kātyāyana III. 10, a fine of 24 *paṇas*. It will be seen from what has preceded that village administration was self-contained and would function whatever Government might happen to be at the centre. The central Government did not very much interfere with local administration, except in the matter of land revenue, protection against invasion and exercised only general control and supervision. The village communities were miniature states.

197. कुलभोजिगणाध्यायाः पुरदुर्गनिवासिनः । वाग्धिदुर्गं परिपालयन् नकुर्वन्तः पापकारिणाश्च । तेऽहं च स्वधर्मेन निग्रहायुज्यं वृणाश्च । तद्वाङ्मोक्षमुत्तमं निमुखायां हि ते स्तुताः ॥
 वृहस्पति quoted by अपराक्ष p. 794, स्मृतिच. II. p. 225, सरस्वतीविलास p. 329.
 There are some slight variations.

There was a great deal of decentralization or devolution of authority from the central government to the village committees and authorities. They were also entrusted with civil and criminal justice, as we shall see later on. For further details on the organization of a village as a political unit, Dr. R. C. Majumdar's 'Corporate life in Ancient India' chap. II pp. 135 ff. and Fick (p. 161) may be consulted. Just as there was some organization in villages in general, so also guilds (*śrenis*) and groups (*gaṇas*) had their own regulations and conventions. In XI.1 Kautilya refers to *kṣatriya* guilds in the countries of Kāmbhoja and Surāstra that maintained themselves on husbandry and followed the profession of arms (vide above p. 88 n. 120). In III.14 he refers to guilds of workmen or labourers (*saṅgha-bhṛtāḥ*). Manu (I. 118) declares that his work deals not only with the enduring *dharma*s of countries, castes and families, but also with the *dharma*s of heretical sects (*pāśanda*) and of groups (*gaṇa*). Manu (VIII. 41) requires the righteous king to consider carefully the *dharma*s of castes, countries, guilds and families (to find out whether they are opposed to the Vedas) and uphold those *dharma*s (that are not opposed) as binding (on those respective persons). Yāj. II. 192 prescribes that the king should respect the usages and conventions of occupational guilds, merchants, heretical sects, and groups (corporations &c.) and allow them to pursue the course of action they had followed from ancient times. Nārada (*saṃnyāsa-nipāṭikā*, verses 2-6) and Bṛhaspati quoted in the *Vīramitrodaya* (*vyavahāra*) contain very important directions as to what conventions of guilds the king should respect and what he is not bound to respect. Nārada says that the king should enforce the conventions agreed upon by heretic sects, *naigamas* (merchants), *śrenis* and other groups residing in the country or the capital. The king may allow them to follow their special rules (e.g. speaking the truth), their special actions (begging in the morning without having taken a bath), their mode of meeting (on hearing a drum being beaten), the means of livelihood they have been used to (e.g. dressing as an ascetic). But the king should prohibit (out of their usages and conventions) such as are opposed to the king's interest, or are disapproved of by the people in general, would be ruinous to the purposes of the king. The king should not tolerate their creating factious groups among themselves, taking up arms for a purpose detrimental to the State, and causing injury to each other. The king should specially curb those who cause dissensions among the several

groups; if they are connived at in these activities they might cause terrible danger.¹⁹⁸ A good deal has already been said about guilds and corporations in H. Dh. vol. II. pp. 66-69. Among inscriptions, the following may be studied: the Nasik Ins. No. 15 of the time of Abhira Īśvarasena (E. I. vol. VIII p. 88, where the *śrenis* of potters, oil-pressers and water-drawers receive deposits), Junnar Buddhist cave Inscription (A. S. W. I. vol. 4 p. 97, where a deposit of money with *śrenis* of bamboo-workers and braziers is made), Gupta Inscription No. 16 p. 70 (an endowment was entrusted to the guild of oil-men, whose head was Jivanta), Gupta Inscriptions, No. 18 p. 79 (silk weavers from Lāta coming to Daśapura and building a Sun temple), E. I. vol. 15 p. 263, E. I. vol. 18 p. 326 and p. 30, E. I. 16 p. 332, E. I. vol. I. 155 (of 933 *śrenis*, inscription at Gopagiri, modern Gwalior, where the guilds of oil-millers and of gardeners are mentioned), I. 184 (Pehoa inscription, where a guild of 34 horse-dealers from different countries, some being brāhmanas, agreed to impose upon themselves and their customers tithes to be distributed to certain temples). Rhys Davids in 'Buddhist India' (pp. 90-96) gives a list of the 18 guilds that probably existed in the times of the early Buddhist works (though two or three of them are of doubtful existence) and the number of which (18) is sometimes mentioned in the Jātakas (as in Mūgapakkhajātika No. 538, vol. VI p. 14 in Cowell's tr.). For further details about the working and organization of guilds, vide chap. I of Dr. R. C. Majumdar's 'Corporate life in ancient India', and 'Indian Culture' vol. 6 (for 1940) pp. 421-28 (on the economic guilds of blacksmiths, barbers &c. in the Kuśāpa period).

In numerous places rules are laid down about the qualifications of the ordinary servants (*parivāra*, *bhṛtya* or *anujīvin*) of kings, how they should conduct themselves, how servants should

198. पावण्डिनैमनञ्जेणीपूमज्जातमण्णादिषु । संश्लेखमपे राजा कुमं जनपदे तथा ॥ यो धर्मः कर्म यच्चैवाहुपस्थानविधिश्च यः । यच्चैषां वृत्तुपादानमनुमयेत तत्तथा ॥ नायकूलं च यद्वाजा मङ्गरपथमते च यत् । वाचके च यद्धानां तलेभ्यो विनिर्जयेत् ॥ मिथः सङ्घातकरणमहितं शस्त्रधारणम् । परस्पररोपवात् च तेषां राजा न मर्षयेत् ॥ पृथग्मण्यश्च ये भिन्नुल्ले विनेषा विज्ञेयतः । आकहेयुर्मयं चोरं स्वाधिवत्ते क्षपेक्षिताः ॥ नारद (समवस्थानपाकर्म 2-6). In the Amraoti Inscriptions (E. I. vol. 15 p. 263) we find the words धन्वजकडकस निमसस (of the trade guild of Dhanyakaja). This place is variously identified (vide E. I. vol. 20 p. 9). The *अमरकोश* holds that नैमन and वाणिज्य are synonyms. विश्वरूप on वा. II. 192 explains 'सार्ध-वाहादिसमूहो नैमनः'. अपरार्क p. 796 explains 'सदं देशान्तरवाणिज्यार्थं ये नाना-जातीया अपिगच्छन्ति ते नैमनाः'.

find out whether the king is pleased or displeased with them. Vide Kautilya V. 4, Virāṭaparva 4. 12-50 (where the refrain of most verses is 'sa rājavasatim vaset'), Matsyapurāṇa 216 (the whole of which is quoted in the Rājadharmakāṇḍa pp. 24-27 and in the Rājanītiprakāśa pp. 189-192), Agni-purāṇa 221, Viṣṇudharmottara II. 25. 2-28, Kām. IV. 10-11, V. 1-4, 6, 9, 11-63 (most of which are quoted in the Rājanītirat-nākara pp. 51-58), Sukranītisāra II 54-68, 205-253. On the word 'aksudrapariśad' occurring in Yāj. I. 310 (where the Mī. has the reading 'aksudroṣparusaḥ') Viśvarūpa quotes a passage from Śaṅkha¹⁹⁹ 'a haṁsa (swan i. e. a good king) surrounded by vultures (greedy servants) is not desirable, but a vulture (i. e. a greedy king) surrounded by haṁsas (servants of spotless character) may be preferred.' The Rājanītiprakāśa (p. 185) quotes the same passage from Śaṅkha-Likhita with an addition viz. 'faults arise from those who surround the king and such faults are enough to ruin (the king). Therefore the (king) should first (before engaging his servants) put down in writing whether servants are endowed with learning, character and good family.' Śakra inculcates loyalty on servants in the following remarkable²⁰⁰ words 'one should not forsake a good master when he is in adversity. Should not one always and quickly desire the welfare of one's protector whose salt (lit. food) one has eaten with honour even once' (II. 246-247)? This senti-ment pervaded most Hindu servants in ancient and medieval times, even under foreign rulers professing a different religion. The Rājanītiprakāśa p. 176 quotes a fine verse from the Garuḍa-purāṇa as to matters to be principally considered in selecting servants, which are four, viz. education, character, family and

199. तथा च शङ्खः । न हंसो युधपरिवारः कामं तु युधो हंसपरिवारः स्वात् । विन्ध्यस्य on वा. 1. 305; शङ्खलिकितौ । न युधपरिवारः स्वात्कामं युधो राजा पेपाक्ष हंसपरिवारो न हंसो युधपरिवारः । परिवाराद्धि दोषाः पादुर्मनन्ति तेषां पिनाशाय । तस्माद्युधमेव तत्परिवारं लिखेच्छुतश्रीलान्धरोपपन्नम् । राजनीतिय. p. 185. This quotation seems to be corrupt. We have probably to omit the word न before हंसपरिवारः. In बसिष्ठ XVI. 21-26 (Fahrsers' ed. of 1916) we have a very similar passage, but it is corrupt. Vide राजधर्मकाण्ड p. 22 for the same passage ascribed to शङ्खलिकित. The पञ्चतन्त्र has a similar verse of same sense (I. 302) 'युधकारोऽपि ज्ञेयः स्वाद्वैसाकारैः सनासदैः । हंसाकारोऽपि संयाज्यो युधकारैः स तैर्युधः ॥'

200. आपदुग्रतं सुभर्तारं कदापि न परित्यजेत् । एकवारमप्यशितं यस्याहं ह्यादरेण च । तद्विष्टं विन्त्येतिवत् पालकस्याजसा न विम् ॥ शृङ्ग. II. 246-247.

actions, just as gold is tested in four ways, viz. by weighing it or by rubbing it (on a touchstone), by cutting it and by heating it.²⁰¹

Some responsibilities of the Government or king in ancient India towards the people will now be dealt with. From Kautilya (II. 29 and II. 34) we find that the State made great efforts for the rearing of cattle, made stringent rules for their protection and for the provision of pastures. Manu VIII 237, Yaj II. 167, Matsya 227, 24 also make provision for pastures round villages, towns and cities. Kautilya requires the superintendent of cattle to classify cattle as calves, steers, tameables, draught oxen, bulls to be yoked, stud-bulls, bulls meant for carts, cattle meant for meat and buffaloes meant for carrying loads or for being yoked, pregnant cows, milch cattle &c. and to mark them and note in a register of beasts the branded marks, natural marks, colour, the distance between the horns. He prescribes corporal punishments and fine for those who unauthorizedly kill or steal cattle or incite others to do so. He prescribes even the amount of fodder, oil-cakes, bran and salt on which different kinds of animals put to different kinds of work are to be fed. From the Mahābhārata also we learn that even princes^{201a} went to supervise and enumerate the herds of cattle belonging to the State. Vide Vanaparva 239. 4 and 240. 4-6. Even such a grammatical work as the Mahābhāṣya incidentally gives expression to the view that a country's wealth consists in its food-crops and in abundance of cattle.

We saw above (pp. 130-131) that spies were to be employed (acc. to Kaut.) to test whether State officers took bribes. Yaj. (I. 336, 338, 339) prescribes that the king should protect his subjects from the harassment caused by *kūpisthus* (the accountants and scribes), that he should ascertain the doings of the State officers through spies, honour those that are well-conducted and severely punish those who are badly behaved and should deprive those who take bribes of their wealth and banish them from the country. Vide also Manu VII 122-124 and Viṣṇudharmottara for similar rules. The Pāṇcatantra (I. 343) has the same verse as

201. गन्धदुराणेपि : यथा चतुर्भिः जलार्थं परीक्ष्यते तुल्यकचच्छेदनापनेन । तथा चतुर्भिर्भूतकाः परीक्ष्यते क्षुत्तेन श्लिष्टेन कुलेन कर्मणा ॥ राजनीतिम्. p. 176. This is गन्धदुराणम् 112. 3 with slight variations.

201a. स्मरणे समयः यानो वत्सावाभवि चाहुनयः । वनपर्व 239. 4, on which नीलकण्ठ explains 'स्मरणदेवो कर्मणि यथा संख्यापूर्वं यथोपन्यासनिवासां लेखने', अर्थवानवद् वेदा उच्यते यस्मिन्मायः सस्यानि च वर्तन्ते । महाभाष्य, vol. II, p. 401.

Yaj. I. 336 (except the last pāda). Medhātithi on Manu IX. 294 remarks that the kingdom has no fear of ruin if kaptakas (wicked people who are like thorns) are removed and justice is properly administered and that kaptakas are generally under the protection of the queen, the prince, the king's favourites or the commander-in-chief.

Great attention was paid to agriculture. In the Sabhaparva 5. 77 the king²⁰² is advised to have large tanks in different parts of the country full of water and to see that agriculture did not depend on the rains alone. Megasthenes (Fragment I. p. 30 of McCrindle's work) notes that the greater part of the soil of India was in his day under irrigation and consequently bore two crops in the year. Even from the Tai. S. V. 1. 7. 3 it appears that two crops were grown in the year (tasmād dvih samvatsarasya sasyam pacyate). The Vaj. S. 18. 12 contains a list of twelve different kinds of crops such as rice, *yava*, wheat, *māṇa*, sesame, *mudga*, *masūra* &c. and the Br. Up. VI. 3. 13 enumerates ten kinds of grain (*grāmyāṇi dhānyāṇi*). In the Hathigumpha Inscription of Khāravela king of Kalinga (E. I. vol. 20 p. 71) it is stated that (p. 79) a canal which had already been opened in the 103rd year of the Nanda kings (i. e. in the 4th century B. C.) was extended by him in the 5th year of his reign. Rudradāman at great expense from his own treasury without any additional taxation or demand for free labour restored the famous Sudarsana lake near Junāgaḍ (E. I. vol. VIII. p. 36) that had been built by the Governors of Candragupta and Aśoka and been breached by floods. Irrigation had been made use of from Vedic times. Rg. VII. 49. 2 refers to rivers and springs naturally flowing and to channels that were dug up. South Indian Inscriptions show how the Pallavas and kings of other dynasties built tanks which were named after the kings themselves or after some distinguished chief of the locality and that are in existence even now. Vide S. I. I. vol. II part III, p. 351, E. I. vol. IV p. 152 (mention of tank called 'parama-ēvaratāka'), S. I. I. vol. I p. 150, E. I. vol. VIII p. 145 (for mention of *rajatāka* near which four *nivartanas* were granted by Cārulevi). The great engineer Suyya under Avantivarman of Kashmir (833-858) successfully dammed the river Vitastā with the result that a *khārī* of rice which could formerly be purchased for 200 *dināras* could be had after the great irrigation

202. काञ्चिदपि तद्व्ययानि यथानि च कुर्वन्ति च । भाग्यो विनिविद्यमानं न कुर्विष्य-
मानमुक्ता ॥ सभा 5. 77.

work for 36 *dināras* (vide *Rājatarāṅginī* V. 84-117). Kautilya (II. 24) refers to the various ways in which crops could be raised with water and the revenue to be demanded in each case, e.g. those who watered crops with manual labour had to pay 1/5th of the produce, those who carried water on their shoulders paid 1/4th, those who watered their crops by means of water-lifts or water-wheels from natural springs paid one-third and those who raised water from rivers, lakes, tanks and wells paid 1/2th. He notes that sugarcane crops are a heavy responsibility, as they are liable to many evils and entail great expense. Sugarcane had been grown even in the times of the *Atharvaveda* (I. 34. 5). The *Śukranītisāra* (IV. 4. 60) remarks that the king should see to it that there is plenty of water in his kingdom by digging wells, wells with steps, tanks, lakes &c. Megasthenes (fragment XXXIV p. 86 of McCrindle's 'Ancient India') says that some superintend the rivers, measure the land as is done in Egypt and inspect the sluices by which water is let out from the main canals into their branches so that every one may have an equal share of it. Kaut. (IV. 3) devotes a special chapter to the king's duty to save the kingdom from national calamities, viz. fires, floods, diseases, famines, rats, wild elephants (or beasts), snakes and evil spirits. He gives practical hints for human and religious remedies and rites against these calamities. The measures against famine suggested by him are: the king may provide the people with seeds and food, start works for those who are distressed, distribute either his own collection of provisions or that of the rich or call for help from his allies, tax the rich and make them disgorge their wealth, migrate to other countries that have abundant harvests. National calamities are called *ṛi*, which are six: excessive rainfall, drought, rats, locusts, parrots and too close presence of foreign kings²⁰³. The work of Kāmandaka states that calamities are either divine or human and that the first are of five kinds. In another place he gives a longer list of calamities. There are several references in ancient and medieval works to severe famines. In the *Chāndogya Upaniṣad* I. 10. 1-3 we

203. अविशुद्धिरनाशुद्धिर्मुषकाः शलभाः शुक्राः । अस्वस्वकाश्च राजानः दहेता ईतवः शुभ्राः ॥ क्षीरस्वामी ०० अमरः, and राजनीतिप्रकाश p. 447; compare ईतवश्च न मन्ति मे । उद्योगपर्व ६१. १७; ह्युताशनो जलं व्याधिर्दुःमिहं मरुतास्तथा । इति पञ्चविधं देवं पश्यन् मातुर्ध्वं परम् ॥ काम. १३. ३० = बुधधूयण p. ६० v. ३२९; अविशुद्धि...शुक्राः । अस्वस्वकाश्च दृष्टव्यश्च परचक्राणि अस्वकाः । राजनीतिकनियोत्सर्गो मरुतव्याधिपिडितम् । पशुनां मरणं शोचो राक्षसपतनमुच्यते ॥ काम. १३. ६३-६४ = बुधधूयण p. ५९ verses ३२२-३२३.

have the story of Uṣastī Cakrāyana who took from another's plate *kulmāṣas* that the other had been eating (i. e. he took *ucchiṣṭa* food), when the country of Kurus was overwhelmed with a shower of hail (or by locusts). The *Bālakāṇḍa* (chap. 9) refers to a famine in the country of Aṅga under Romapāda. The *Nirukta* II. 10 refers to a drought in the dim past for twelve years in the kingdom of Śāntanū. A Mauryan inscription from Mahasthāna (ancient Puṇḍranagara) shows that Gaṇḍaka coins were distributed and also corn to famine-stricken people (J. A. S. B. for 1932 p. 123). The Sohagpur Copperplate Inscription (of Mauryan times) contains an order of the mahāmātras of Śrāvastī that the *dhānyas* storehouses were to be spent only in case of drought. Vide *Annals of B. O. R. Institute*, vol. XI p. 32ff., E. I. vol. 22 p. 1 and J. A. S. B. vol. VII (for 1941) part 2 p. 203. The *Rājataranginī* records several times the occurrence of famines in Kashmir at different periods (e. g. vide II. 17-54, V. 270-278, VII. 1219 ff.). The *Maṇimekhalai* (chap. 28) speaks of a famine for twelve years at Kāñiṭ in South India. There was a terrible famine (called the famine of Durgādevī) for twelve years in the Deccan about 1396 A. D. (vide Grant Duff's 'History of the Marāṭhas' vol. I. p. 43). Vide E. I. vol. 15 p. 12 for a reference to a severe famine in *śaka* 1313 when paddy could not be had even at the rate of ten *nālis* a *paṇam*.

It has been shown (in H. Dh. vol. II. pp. 113, 369, 856-858) how it was the king's duty to support learned brāhmanas, to hold assemblies of poets and learned men, to make gifts of land to educational institutions and to promote learning in all ways. *Vṛddha-Hārta* VII. 229-230 says that only learned brāhmanas who are endowed with *tapas* are proper objects of the king's bounty. Some emperors like Harṣa went far beyond what was reasonable. The Chinese pilgrim tells us (Beal's 'Buddhist Records &c.' vol. I pp. 214, 233) that at the end of every five years Harṣa held an assembly (*pariṣad*) at Prayāga and gave away all in charity. The *Sukranitisāra* (I. 368-369) holds that a king should be on the look-out for educated men, should appoint them to offices suited to their education, should honour every year those who have attained eminence in learning and the arts and take measures for the advancement of learning and arts. It has already been shown how this had been followed by ancient and medieval Indian kings to the letter. A comparison with the British Indian Government in the 18th century and the first decades of the 19th will be highly interesting. After the battle of

Plassey in 1757 the British East India Company got three such rich provinces as Bengal, Bihar and Orissa. During over 50 years the only thing that was done by the ruling power for the encouragement of learning among Indians was that in 1780 Warren Hastings started a *Madrasa* of Muslim religious learning at Calcutta with a *moulvi* and 40 stipendiaries and Lord Cornwallis founded a Sanskrit college at Benares in 1792. When the East India Company's Charter was renewed in 1813 the only provision that was made for education and encouragement of learning (by George III, 1813 chap. 155, clause 43) was 'that it shall and may be lawful for the Governor-General-in-Council to direct that out of any surplus which may remain of the rents, revenues and profits arising from the said territorial acquisitions, after defraying the expenses of the military, civil and commercial establishments and paying the interest of the debt, a sum of not less than one lakh of rupees in each year shall be set apart and applied to the revival and improvement of literature and the encouragement of the learned natives of India and for the introduction and promotion of a knowledge of the sciences among the inhabitants of the British territories in India'. Detailed comment is not called for. More than 50 years after British rule began, when at least half of what is British India now had come into the hands of the British, and when the yearly income must have been many crores of rupees, the sum of a lakh of rupees was to be set apart for education of two kinds (Eastern and Western) in the whole of the then British India. Further this provision was not compulsory but only permissive, and was to be availed of only if some surplus was left after everything else had been provided for.

As in western Jurisprudence, so in India the king was looked upon as *parens patriæ*, the protector or guardian of all minors. Gaut.²⁰⁴ X. 48-49 and Manu VIII. 27 prescribe that the king shall protect the property of a minor until he attains majority or until he returns from his teacher's house. Medhātithi on Manu VIII. 27 says that the minor's relatives like the uncles may contend that one of them is the guardian of the minor's property but it is the king who is to see that the minor's property is kept

204. इत्थं बालधनमाव्यवहारात्पणात् । समावृतेर्वा । सी. X. 48-49; रक्षेद्वाजा बालानां धनान्यव्यवहाराणां श्रेयिषवीरपत्नीनाम् । सङ्कलितम् q. in वि. र. p. 598; बालधने राजा स्वधनव्यवहारात्पत्नीनाम् । अन्वयात् पितृपादिवान्धवा मयेदं रक्षणीयं मयेदं रक्षणीयमिति विचक्षेत् । मेधा. on मनु VIII. 27. On मनु VIII. 28 he remarks यः कश्चिदुपायस्तेन सर्वस्य धनं राजा पथावत् परिरक्षेत् । तथा श्रोत्रादरण्यमात्रं दद्याद्वयम् ।

safe. Baud. Dh. S. II. 2. 43, Vas. 16. 8-9, Viṣṇu Dh. S. III. 65, Śāṅkha-Likhita contain a similar rule. Nār. (pāda 35) declared that a person was a minor till the 16th year. Manu VIII. 28-29, Viṣṇudharmasūtra III. 65 extend the same rule and say that the king must take care of barren women, women who have no sons, women whose families are extinct, wives and widows who are faithful to their husbands and of those who are afflicted with disease. Nār.²⁰⁵ as quoted by Medhātithi says that if a woman has nobody in her husband's or father's family to protect her, then it is the king who is to protect her. Kauṭ.²⁰⁶ (II. 1) makes it a duty of the elders of the village to take care of and increase the properties of minors and of temples.

It was the special concern of the king to see that proper weights and measures were used. Kauṭ. (II. 19) as stated above (pp. 145-146) provides for a special superintendent of weights and measures. Vas.²⁰⁷ (19. 13) and Manu VIII. 403 provide that all weights and measures must be duly marked (or stamped), that once in six months they must be re-examined and that the weights and measures for objects required by the class of householders must be guarded against falsifications. Yaj. II. 340 and Viṣṇudharmasūtra V. 122 prescribe as punishment the highest amercement for those who fabricate false balances, edicts, measures and coins and also for those who use them in their transactions. The Nītivākyaṃṛta (p. 98) requires the king to be vigilant as regards merchandise, balances and measures, since there is none who excels traders in stealing people's money before their very eyes.²⁰⁸ Vide Alberuni (tr. by Sachau) vol. I chap. XV about weights and measures current in India in the 11th century.

Another important responsibility of the king concerned thefts. Asvapati, king of Kekaya, boasted that in his kingdom there was no thief, no close-fisted person, no drinker of wine,

205. विनिर्घोषात्तरशासु भरणे च स ईश्वरः । परिशीले पतिकुले निर्मदुष्ये निराश्रये ।
तस्य पिण्डेषु वाऽस्यस्य पितृपुत्रः यशुः क्षिपाः । पञ्चद्वयावसाने तु राजा भर्ता यशुः क्षिपाः ॥ quot.
ed by मेधाः on manu V. III. 28. The first three half-verses are नारद (द्वापभाष
28-29), the printed text of which does not contain the half verse पञ्च- &c.

206. बाह्यद्वयं ग्रामद्वयं वर्षेयपुराण्यवहारपापनात् । द्वेषद्वयं च । कौटिल्य
II. 1. p. 48.

207. गार्हस्त्यपाङ्गानां च मानोन्माने रक्षिते स्वातन्त्र्यम् । वसिष्ठ 19. 13.

208. वन्द्यतुल्यमानद्वयौ राजा स्वयं जायते । न वणिग्ग्यः सन्ति यरे वन्द्यतोदयाः ।
नीतिशास्त्रा. p. 28.

(Chān. Up. V. 11. 5). Āp. Dh. S.²⁰⁹ (II. 10, 26. 6-8) lays down that the officers should protect a city against theft for one *yojana* round it and in the case of villages for one *krośa* round them and that whatever is stolen within those limits must be returned to the owners by the officers. Gautama X. 46-47, Manu VIII. 40, Yāj. II. 36, Vispudharmasūtra III. 66-67, Śānti 75. 10 prescribe that the king should recover from the thief stolen property and restore it to the owner (without distinction of caste), that if he cannot restore it he should compensate the sufferer from his own treasury, and that, if he retained the property recovered from a thief or did not make efforts to catch the thief and compensate the owner, the king incurred sin. Kauṭ. III. 16 contains a similar rule.²¹⁰ Viśvarūpa on Yāj. II. 38 quotes a prose passage²¹¹ of Br. with a similar import. The Vispudharmottara²¹² (II. 61. 52) remarks that if a person is robbed by his own servants then he (the king) may endeavour to recover it from the servants (by threatening or beating them), but need not restore it from his own treasury. Yāj. II. 270-272, Nār. (pariśista 16-21) and Kāt.²¹³ give further directions, viz. the thief should be made to restore the property stolen or its price; if the thief cannot be found the officers and wardens of the country pay the price of the stolen articles; the property stolen in the village should be made good by the headman of the village, if the thief's foot-steps

209. सर्वतो योजनं नगरं तस्मिन्नेषो रक्षयम् । कोशे ग्रामेभ्यः । तत्र यन्मुच्यते तैस्तप्रति-
द्यापयम् । आप. ध. सू. II. 10, 26. 6-8.

210. परचक्रावधीकृतं तु ग्रामानीय राजा यथास्वं ययच्छेत् । चौरदुतमविद्यमानं स्व-
द्वन्द्वेभ्यः ययच्छेत् । कौटिल्य III. 16 p. 190.

211. चौरदुतमयजित्वा यथास्थानं ययच्छेत् । कोशाद्वा दद्यात् । वा. X. 46-47; ग्रामा-
दुतमशक्यं स्वाद्धनं चौरिद्वैतं यदि । तत्स्वकोशात्तद्वैतं स्वाद्धनकेनोपजीवतः ॥ शान्ति 75. 10.
The Mitaśhara on वा. II. 36 quotes Gauṛ. and Śānti 75. 10: 'तथा च बृहस्पतिः ।
चौराणद्वैतं तु सर्वेभ्योनिष्कार्यणिपम्' । अत्राने स्वकोशाद्वा । अद्वन्द्वचोरकित्तिवधी रथात् ।
विश्वरूप on वा. II. 38 (of Tri. ed.).

212. न तद्वाजा यथास्वं गृहे पत्युश्चरकैः । प्रचरन्निद्वैतं ग्रामं कार्यं तत्रान्वेषयन्म् ।
विष्णुधर्मोत्तर II. 61. 52, quoted by राजनीतिप. p. 127.

213. गृहे तु मुक्तिं राजा चौराणांस्तु द्यापयेत् । अशक्यंश्च द्विकपालान् यदि चौरो
न लभ्यते ॥ ग्रामान्तरे दूतं द्वयं ग्रामाध्यक्षं द्यापयेत् । विधीते स्वामिना देवं चोरोद्धर्ताऽवि-
धीकते ॥ कात्यायन quoted by अपराक्ष p. 344. Vide 'Selections from Peshwa
Daftar' vol. 43 p. 131 (No. 166) for a comparatively recent (18th century)
instance of a village (Pāṭas in this case) being held responsible collectively
for a theft.

are not traced as going out of the village; if the theft takes place in a pasture land or forest (and the thief is not found), the owner of it should be made to pay; if however the theft is not committed in a forest but on the road then the officers appointed to arrest thieves should be made to pay; the whole village may be made to pay the compensation when the theft is within the boundaries of a village but outside the limit of the residential quarters, if the footsteps of the thief are not traced as going out of the village; if the theft takes place beyond one *krośa* from a village then the surrounding five or ten villages may be made to pay the compensation. Yāj. II. 271 and Kāt. mention an officer called 'cauroddhartā' ('or coroddhartā'). The 'cauroddharanika' (thief-catcher) is an officer mentioned in numerous inscriptions e. g. in the Palitana plates of Dharmasena II of Valabhi in Gupta year 252 (E. I. vol. XI at p. 83), in the inscription of Nārāyaṇapāla where we have both cauroddharanika and kottapāla, modern Kotwal (I. A. vol. XV p. 304) and in the grant of Ballālasena quoted above (p. 153, n. 191). Kautīlya IV. 13 also gives similar rules and mentions an officer called 'corarajjuka' who has to make good the loss of merchandise by theft between two villages or lands that are not pasture lands.

The first quality required in a king according to Yāj. I. 309 quoted above (p. 44) is great energy and Kaut. also (in VI. 1) mentions 'great energy' (mahotsāha) among the qualities called 'ābhigāṇika'. Works on dharmaśāstra and arthaśāstra emphasize the fact that a king must always be full of activity and must not be lethargic or fatalistic. In the Mahābhārata the topic of human effort and *daiva* (fate or destiny) comes up for treatment in numerous places and is put in the mouth of several characters with different emphasis according to circumstances. In Ādi 1. 246-247, 89. 7-10, Sabhā 46. 16, 47. 36, 58. 14, Vanaparva 179. 27-28, Udyoga 8. 52, 40. 32, 159. 4, 186. 18, Āśramavāsika 10. 29 the emphasis is on *daiva* as all powerful, it being said that human effort is useless as against *daiva*. A golden mean is advocated in Ādi. 123. 21, Sabhā 16. 12, Udyoga 79. 5-6, Śānti 56. 14-15, Sautika 2. 3, in all of which it is said that worldly affairs require both *paraśakāra* (effort) and *daiva*. In certain other passages it is recommended that effort is superior to *daiva* and that one's business is to make efforts and not to care for fate; e. g. in Droṇa 152. 27, Śānti 27. 32, 58. 13-16, 153. 50, Anuśāsana 6. 1 ff, Sautika 2. 12-13 and 23-24. A few of the striking passages indicative of the three lines of thought are

set out in the note below.²¹⁴ Energetic action, according to Śānti. 58. 13-15, is declared by Bhṛhaspati to be the root of rājadharmā. Nectar was obtained and asuras were killed by the gods by means of energetic action and Indra secured his high position in heaven and here by energetic action, Br. makes the characteristic remark 'A man who is a hero of action leads those who are heroes in speech and the latter are seen to cater for the pleasures of the former and wait humbly on him'. The Bhagavadgītā in its final summing up of the philosophy of Activism without an eye to the fruit of it but from a sense of duty declares (XVIII 13-16) 'that in the Sāṅkhya philosophy five categories are mentioned as conducive to the accomplishment of all actions viz. the place, the agent, various kinds of instruments, diverse and separate activities and lastly *daṁṣṭra*; that whatever action a man commences - either with his body, words or mind these five are its causes, whether the action be righteous (nyāyā) or the opposite of it, and that this being the true state of things (i. e. the fruit depending on the co-operation of five elements and not on one alone) that man who regards himself alone as bringing about a result is a fool and has no correct perception.' Kāuṭilya also (I. 19 last two verses) says 'activity (*utthāna*) is the root of wealth and the opposite of it is the root of evil. In the absence of activity the loss of present and future acquisitions is sure; by activity a king can obtain his desired object and plenty of wealth'. Yāj. (I. 349 and 351) states that success in undertakings depends upon both fate and human effort, yet fate is nothing but the

214. देवं यज्ञाधिकारेण को निषर्तितुमर्हति ॥ विधातुविहितं मार्गं न कश्चिदतिवर्तते ।
आदि 1. 246-247; देवं दुरुचकारेण को निषर्तितुमुत्सहेत् । उद्योग 180. 18; देवमेव परं
मन्त्रे योर्वर्षं तु निरर्थकम् । समा 47. 36; देवं दुरुचकारेण को यज्ञप्रतिभर्तति । देवमेव परं
मन्त्रे दुरुचार्थो निरर्थकः । वनपर्व 179. 27 (said by भीम when caught by Afāgarā);
न हि दिव्यमतिकार्यं ह्यर्घ्यं भूतेन केनचित् । दिव्यमेव ध्रुवं मन्त्रे योर्वर्षं तु निरर्थकम् ॥ उद्योग
40. 32; (2) देवे दुरुचकारे च लोकोर्धं संमतिष्ठतः । आदि 123. 31; जपस्य हेतुः सिद्धिर्हि
कर्म देवं च संभितम् । समा 16. 12; देवे च मातुषे चैव संयुक्तं लोककारणम् । उद्योग 79. 3;
न ह्युत्थानयुते देवं राज्ञामर्थं यसाधयेत् । साधारणे ह्यर्थं क्षीतद्वैवमुत्थानमेव च ॥ शान्ति
56. 14; न हि देवेन सिध्यन्ति कार्याण्येकेन सत्तम । न चापि कर्मण्येकेन ह्यग्नां सिद्धिर्यु
योगतः ॥ सौप्तिक 2. 3; (3) एतन्मो हि सत्तमं कार्यमस्तौ देवेन सिध्यति । शान्ति 153. 50;
तत्राज्ञाना यमुत्थाप्यां ये भ्रमस्यममस्विनः । उत्थानं ते विगर्हन्ति माज्ञानां तत्र रोचते ॥ बुद्ध्यानां
वचनं बुद्ध्या योन्मुत्थानं योजयेत् । उत्थानस्य फलं सम्पत् तदा स लभेदचिरात् ॥ सौप्तिक
2. 12 and 23; उत्थानं हि मेनेन्द्राणां दुस्त्वनिर्भाषत । राजधर्मस्य सम्पत् क्षीकाञ्चाय
निबोध मे ॥ उत्थानेनासुतं लब्धमुत्थाप्येनासुरा हताः । उत्थाप्येन महेन्द्रेण क्षीकं भारं दिवीव
च । उत्थाप्योर्वीरा दुरुचो वाक्वीरामधितिष्ठति । उत्थानवीरान्वाक्वीरा सम्यन्त उपासते ।
शान्ति 58. 13-15.

human effort of past lives manifesting its effect (in this life) and that as on a single wheel a chariot cannot progress, so fate cannot accomplish anything without human effort. Yāj. I. 350 refers to other views viz. fate alone leads to success, human effort alone does so, that success results of itself (without any cause), while others say that it is Time that brings about all results. Manus VII. 205, Matsya 221. 1-12 (all of which are quoted in the Rājanītiprakāśa pp. 313-314) and Viṣṇudharmottara II. 66 (which has the same verses as in Matsya 221) inculcate the same doctrine as that of Yāj. I. 349 and 351 and emphasise that one must always make efforts (tasmāt sadotthānavatā hi bhāvya—Matsya 221. 12). The Matsyapurāṇa 221. 2 emphatically²¹³ states that effort is superior. Medhatithi on Manus IV. 137 quotes a *subhāṣita* 'those devoid of effort are engaged in calculating the aspects of planets; there is nothing impossible of accomplishment for those who are determined and who are able to put forth spirited efforts.' Kaut. (IX. 4 last two verses), Kām. V. 11, XIII. 3-11 emphasize the importance of strenuous efforts. Śukranītiśāra (I. 46-58) holds a long disquisition on effort²¹⁴ and *daiva*. It contains the following fine sentiments (I. 48-49): 'Men of intellect whose career is honourable regard human effort as the highest (and not fate), while impotent men not being able to make efforts have recourse to fate; but all is centred in both *daiva* and effort'. Vide Rājanītiprakāśa pp. 312-315 and Nītimayūkha pp. 52-53 for further remarks on *daiva* and effort. In one place the Mahābhārata (Udyoga 127. 19) contains the bravest and loftiest advice 'man should always press forward (make efforts), should never bend: striving is manliness; one may even break at a point which is not the joint, but should never bend'²¹⁵. The Brhat-Parāśara-smṛti X pp. 282-283 contains a long discourse on *daiva* and *purusakāra*. Vide Vāyu 9. 60-61 and Mārkaṇḍeya-purāṇa 2. 61-62 and 23. 25-26 for similar passages on *daiva* and effort.

An important doctrine of the writers on Arthaśāstra is more or less based on the necessity of *utsāha*, viz. the doctrine of three

213. स्वमेव कर्म देवास्तर्पयन्ति देवान्तराजितम् । तस्मात्पौरुषमेवेह श्रेष्ठमाहुर्मनीषिणः ॥ मत्स्य 221. 2 । भीमस्तो वन्द्यचरिता मन्थले पौरुषं महत् । अशक्ताः पौरुषं कर्तुं श्रोत्रा देव सुपासते ॥ देवे दुष्टकारे च शत्रु सर्वे प्रतिष्ठितम् । शुक्रः I. 48-49: अस्ति कश्यपिस्तु भाषितम् । हरिः दुष्टकारेण मणवन्ति ग्रहरिष्यति । सत्त्वोद्यमसमर्थानां नास्तार्यं व्यवसायिनाम् ॥ मेघः ०० मनु IV. 137.

214. उद्यच्छेदेव न जनेषुद्यमो ह्येव पौरुषम् । अप्यपर्यणि मन्थेन न जनेषु कार्यचित् ॥ उद्योग 127. 19.

śaktis, i. e. of *utsāha*, *prabhu* (or *prabhāva*) and *mantra*. These three occur in the Mahābhārata (Āśramavāsika 7. 6). The S. V. p. 46 quotes a sūtra of Gautama (not found in the printed Dh. S.) 'the three śaktis, viz. *prabhu*, *mantra* and *utsāha* are based on that (kośa)'.²¹⁶ In VI. 2 Kaṭilya defines *mantra-śakti* as the power of the knowledge (of statecraft), *prabhuśakti* as the power of treasury and army and *utsāhaśakti* as the force of the king's bravery.²¹⁷ Kaṭilya (IX. 1) holds a discussion about the relative superiority of these three and gives it as his opinion (as against that of the ścāryas) that *prabhuśakti* is superior to *utsāhaśakti* and that *mantraśakti* is superior to *prabhuśakti*. Kām. XV. 32 defines²¹⁸ the three thus: 'the employment of the proper line of policy out of the six *upāyas* (*sandhi*, *vigraha* &c.) is called *mantraśakti*; a full treasury and army constitute *prabhuśakti* and activity of the strong is called *utsāhaśakti*; the king possessed of all these three becomes the conqueror.' The Nītivākyaṃṛta (*sadguṇyasamuddēśa*) p. 322 defines them in the same way.²¹⁹ According to the Daśakumāracarita²²⁰ VIII the goal (or purpose) of a king is determined by *mantra* (consultation with ministers about policy), commencement of actions (for securing the goal) is due to *prabhāva* and the successful termination of undertakings is brought about by energy. The Parāśurāmapratāpa (folio 15a) quotes a verse which defines 'prabhuśakti' differently viz. as the power to command. Vide also Agnipurāṇa 241. 1, Mānasollāsa II. 8-10 pp. 91-94. Kām. (XIII. 41-58) brings together the numerous activities of the king.

A king endowed with valour has to employ several means (*upāyas*) to extend his dominions and to keep his hold on his own people. According to the Rāmāyana V. 41. 2-3, Manu VII. 109, Yāj. I. 346, Sukra IV. 1. 27 and others the

216 a. अत एव मोक्षमद्वयम् । यमुन्मूर्च्छितसाहसकयस्तन्मूलाः इति । तन्मूलाः कोश-
मूला इत्यर्थः । न. वि. p. 46.

217. इच्छाविविधा ज्ञानवर्त मन्त्रशक्तिः कोशवर्त प्रभुशक्तिः विक्रमवर्त उत्साहशक्तिः ।
अर्थशास्त्र VI. 2. p. 261.

218. मन्त्रस्य शक्तिः सुवर्षोपचारं सुकोशवृद्धौ प्रभुशक्तिमाहुः । उत्साहशक्तिं बलव-
द्विषेष्टां विज्ञातिपुच्छौ भवतीत्युच्यते ॥ कामन्दकीयः XV. 32.

219. कोशवृद्धवर्त प्रभुशक्तिः । सुदृशकिकुमारौ वृद्धान्तौ । विक्रमो वर्त चोत्साह-
शक्तिस्तत्र समौ वृद्धान्तः । नीतिशास्त्रपाद्युत pp. 322-323.

220. मन्त्रेण हि विनिश्चयोऽर्वाङ्गो यमनिष्पन्नः उत्साहेन निर्वह्यते । दशकुमार-
चरिते VIII. p. 144 (Bom. S. S. ed. of 1919); आज्ञाकरणेन वा शक्तिः सर्वेषां मूर्धनि
स्थिता । प्रभुशक्तिर्हि सा ज्ञेया समामादिमोदया ॥ 9. by परशु म. (राजवह्मनकोश
folio 15a). Vide पञ्चतन्त्र III. 30 'उत्साहशक्तिसंयुक्तो हन्याच्छत्र्यं लज्जयिष्यते'.

upāyas are four viz. *sāma* (conciliation), *dāna* (giving gifts or presents), *bheda* (causing dissensions) and *danda* (punishment or depriving of property or causing bodily harm).²²¹ In the Hathigumpha Inscription, the king Khāravela (latter half of 2nd century B. C.) states that in the 10th year of his reign he sent, following the policy of *danda*, *sandhi* and *sāma*, an expedition against Bharatvarsa, conquered that land and obtained jewels and precious things (E. I. vol. XX pp. 79, 88). This shows that the theory of the upāyas must have been evolved several centuries before the Christian era. Some others such as Kām. XVII. 3, Matsya 22. 2, Agnipurāṇa 226. 5-6, Bārhaspatyasūtra V. 1-3, Viṣṇudharmottara II. 145-149 add three more to the above four. Sabhā 3. 21 mentions the number seven and Vanaparva 150. 42 mentions *sāma*, *dāna*, *bheda*, *danda* and *upekṣā*. About the additional three there is some difference of opinion, most holding that the three are *māyā*, *upekṣā* and *indrajāla* (Kām., Agnipurāṇa), while the Bārhaspatyasūtra (V. 263) says they are *māyā*, *upekṣā* and *vadha* and others say they that are *māyā*, *akṣa* (dice) and *indrajāla* (Sarasvativilāsa p. 42). *Māyā* means 'deceitful trick'. The Viṣṇudharmottara II. 148 gives illustrations, such as tying a firebrand to the tail of a bird that often perches on the enemy's camp to produce the delusion that a meteor (an evil omen) fell down from the sky. Kām. XVII. 54 cites the example of Bhīma's meeting Kicaka dressed as Draupadī. Kām. (XVII. 51-53) gives other examples of *māyā*. *Upekṣā* consists in not preventing a person from doing what is unjust or being addicted to some vice or engaging in a fight and is illustrated by king Virāṭa's connivance at the death of Kicaka (Kām. XVII. 55-57). *Indrajāla* means 'creating an illusion by means of incantations and other tricks' e. g. creating the illusion before the eyes of the enemy that a vast army is coming to attack them or showing that angels are descending to fight against them or making a shower of blood fall in the enemy's camp etc. (Kām. XVII. 58-59, Viṣṇudharmottara II. 149). About the four well-known upāyas, Manu (VII. 108-109) says that for the prosperity of one's kingdom *sāma* and *danda* (punishment) are preferred, but if

221. अल्पशेषमिदं कार्यं हरेषमसितेक्षणा । वीतुपापानतिक्रम्य चतुर्थं इह दृश्यते ।
न सामं रक्षःसु युष्माकं कल्पते न दानमर्थोपचितेषु युज्यते । न भेदसाधना वादयिता जनाः
हराकमस्त्रेण ममेह रोचते । सुन्दरकाण्ड 41. 2-3; उपायोपपत्तिक्रमोऽनुरक्तमकुतिलव-
द्देशोपि युपतिर्भवति सार्वभौमः । न हि कुलापना कस्यापि युनिः किन्तु वीरभोग्या वसुधरा ।
सामोपयदानभेददण्डा उपायाः । नीतिशास्त्रासूत्र p. 332.

the king's antagonists do not yield to him by the employment of the first three then he may bring them round by *danda* (i. e. fighting and harassing them) and that (VII. 198, 200) *danda* is to be employed as the last resort, since victory is not certain. In the *Santiparva* 69. 23 the view of *Bṛhaspati* is quoted²²² that fighting should always be avoided (as far as possible) and that for securing one's purpose three *upāyas* (other than fighting) are to be resorted to. *Bṛhat-Parāśara* X p. 280 also says that a wise man should not resort to fighting and that *danda* is to be resorted to only when there is no other course left. In *Udyoga* 132. 29-30 (cr. ed. chap. 130) *Kuntī* sends a message through *Kṛṣṇa* to her son: 'begging is forbidden to you nor is agriculture appropriate for you; you are a *ksatriya* living by the power of his arms and a protector against injury (*keśatāt trātā*). Recover your ancestral share by *sāma*, *dāna*, *bheda*, *danda* and *naya*'. In *Udyoga* 150 (cr. ed. 148) *Kṛṣṇa* informs *Yudhisṭhira* how he first employed *sāma*, then *bheda*, then *dāna* (viz. giving up the whole kingdom for five villages) and how only *danda* is the proper recourse in the case of the wicked *Kauravas*. *Hopkins*, as very often, being obsessed with his ideas of three strata in the *Mahābhārata* says that three means appear to be the oldest form and four means a later idea. There is hardly any warrant for this opinion as for many others in the same strain (*J. A. O. S.* vol. XIII pp. 182-183 n). The *Viṣṇudharmottara* II. 146 speaks of the four *upāyas* and states that *danda* as regards a foreign state is open (*prakāśa*) i. e. burning and not-open (*aprakāśa* i. e. by poison or secret death). The *Mit. on Yāj. I. 346* and *Kām. XVIII. 1* say the same thing. The *Viṣṇudharmasūtra* III. 38 prescribes that the four *upāyas* are to be employed at the proper time and according to the attitudes of the hostile king, friendly king, the *mudhyama* and *udāsīna* kings²²³. The *Mit. on Yāj. I. 346* expressly states that the four *upāyas* are to be employed not only in the affairs between kings but also in the lives of all ordinary people and cites a verse wherein a father or teacher addresses a son or pupil making use of all four means²²⁴. *Kām. XVII, Mānsollāsa* II.

222. सर्वनीचं सदा दुष्टं राज्यकामेन धीमता । उपायैस्त्रिमिरादानमर्थेऽप्यहं ब्रुहस्पतिः ।
शांति 69. 23. न दुष्टमाभयंयाज्ञो न कुप्यंस्त्वं स्वयलक्षयम् । ... वदन्ति सर्वे नीलिजा दुष्ट-
स्त्वगतिका यतिः । ब्रुहस्पतराजः, दुष्टस्त्वगतिका यतिः is the last वाद of वा. I. 346.

223. अश्वामित्रोदासीनमप्यप्येव सामभेददानदण्डैश्च यथाहं यथाकालं वदुर्जीव ।
विष्णुधर्मसूत्र III. 38.

224. एते सामादयो न केवलं राज्यव्यवहारविषयाः अपि तु संकललोकाव्यवहार-
विषयाः । यथा-अधीत्य दुष्टकापीव्य द्वास्थानि तव मोदकान् । यज्ञावस्थे यद्वास्थानि कर्ण-
युत्थादयानि ते ॥ इति । मिता. on वा. I. 346.

17-20 verses 972 ff (pp. 117-122), *Nītivākyaṃṛta* pp. 332-336 treat at length of these four upāyas. A few points only are noted here. *Sāma* is of five kinds viz. recounting the good turns done by each to the other; praising the qualities and actions of the persons to be won over; declaring the relationship of each other; representing the good that will result in future; declaring 'I am yours and I am at your service' (Kām. XVII. 4-5). *Dāna* consists in returning what is deposited with one by another, consenting to the taking away by another of one's things, making a gift of something new, giving what the other chooses to ask for, sending at fixed times what has to be given. *Bheda* (sowing dissensions) consists in giving heavy bribes or presents to ministers or feudatories, the crown prince and high officers of the enemy that are dissatisfied for various reasons, creating distrust between the king and his ministers, the rich men and the handsome men in the kingdom by the threat of the loss of life, honour, position, and wealth, by the fear of imprisonment, by the fear that the king may carry away the beautiful wife of a subject or by suggesting that a handsome young man has his eye on the king's harem, and suggesting to a king that a kinsman desires to secure the kingdom to himself and thereby inducing the king to put out his eyes or cut off his limbs. This is effected by secret spies or persons who are in the pay of both kings (*ubhayaśayana*, acc. to *Mānasollāsa* p. 119 v. 995)²²¹. Vide Kaut. XI. 1, *Matsya* chap. 223 and *Sūtra* IV. 1. 25-54 for *bheda*, Kaut. XI. 1 explains at length how an aspiring conqueror is to sow dissensions between corporations and the leaders of corporations, between chiefs and other people. One or two passages may be quoted by way of sample: "Spies gaining access to these corporations (of warriors and others) and finding out jealousy, hatred and other causes of quarrel among them should sow seeds of a well-planned dissension among them, and tell one of them 'this man decries you'. Spies may give publicity to the consideration of priority shown to inferior persons in social intercourse in the face of the established custom of recognising the status of other persons by birth, bravery, and social position. In all these disputes the conqueror should help the inferior party with men and money and set them against the superior party. A woman who has disappointed her lover and has been for-

221. शत्रुभेदाय मयुरवैगुण्डैश्च मयवेतनैः । शीतलमानिताम् कृत्वा न भेदयेच्च सप्तकुलान् ।
 मयापहो मानभङ्गो धनदानेन च बन्धकः । दातामिताकोऽप्यनङ्ग इति भेदोऽप्यवदन्निधः ।
 मानसोद्गाहः II. 13, verses 288-289 p. 118.

given may approach and say to a chief 'this chief is troubling me when my mind is set on you; when he is alive I cannot stay here' and thus induce the former to slay the latter." The *Matsyapurāṇa* 223. 4 states that united people are more than a match even for Indra unless bheda is employed, that dissensions are of two kinds, internal and external, of which the former is more serious. External dissension means the quarrel with a chief, but internal dissension means dissension between a king and his queen or heir apparent or ministers. One should try to prevent dissension with one's own relatives. *Sānti* 69. 23 also advises the conquest of territory by fomenting dissensions. Therefore the expedient of '*divide et impera*' has a respectable antiquity. Danda in the case of a king's country consists in sentencing to death or corporal punishment or fine and in the case of the enemy in fighting, destroying or devastating his country by seizing his crops and grain, cattle, wealth, forts and in imprisoning and injuring his people, burning his villages and forests.

There were certain privileges that the king enjoyed. His rights to treasure trove have already been referred to (H. Dh. vol. II, p. 146). Kaut. (IV. 1) gives the following rules. The person giving information about the discovery of a mine, jewels or treasure trove gets one-sixth, but if the informer be a servant of the king he gets $\frac{1}{8}$; treasure trove beyond 100000 panas went to the king wholly (the finder being entitled to a $\frac{1}{16}$ th share only up to 100000 panas of the whole); a subject who can prove that the treasure trove belonged to his ancestors would get the whole of it; if he takes it without establishing his ancestral ownership he is to be fined 500 panas and 1000 panas if he appropriated it secretly. The king also took by escheat the property of a person dying without leaving any heir except in the case of brāhmanas (vide H. Dh. II, p. 146 where some authorities are cited). This subject will be dealt with at greater length under the next section on 'law and justice'. The king was also entitled to all property that was lost or given up by the true owner. Vide Gaut. 224 X. 36-38, Vas. 16. 19, Manu VIII 30-33, Yāj. II. 33, 173-174, Śaṅkha-Likhita, Gaut. and Baud. Dh. S. (I 10. 17) say that the king should preserve for one year articles found after proclaiming the finding by beat of drum, while Manu says that

225. अथदमस्वामिदमधिदम्प राज्ञे यद्भुतः । विक्रयान् ५ वसर् राजा स्वयम् । इध्वं-
मधिदम्पुष्यदुर्ध्व राज्ञः श्रेयः । मी. X. 36-38: यद्द्विषस्वामिकानि राजमन्त्रानि मन्त्रिः ।
शङ्खलिखित quoted in नि. र. p. 599.

the period is three years. The Mit. on Yāj. II. 33 reconciles these texts by saying that if the true owner comes to the king and establishes his ownership he gets back the entire article without paying anything for safe custody, if the owner comes in the 2nd year he pays $\frac{1}{3}$ of the price for custody, if in the third year he pays $\frac{1}{2}$ and $\frac{1}{3}$ if he comes after three years. The finder gets $\frac{1}{3}$ out of the share taken by the king. If the owner does not come at all the finder gets $\frac{1}{2}$ and the king the rest. The king may dispose of the article if none claims it within that period, but if the owner comes after three years and the article has been disposed off, the king should return the equivalent of the portion taken by him. Yāj. II. 174 specifies other scales of charges for the custody of unclaimed animals such as four paṇas for a horse &c. Another special privilege of the king was that he could not be cited as a witness in a judicial proceeding between private parties. Vide Kaut. III. 11 (p. 175), Manu VIII. 65, Viṣṇudharma-sūtra 8, 2.

Constitutionally there was no one who could directly bring to book the king guilty of injustice. But the Dharmaśāstra writers insisted that *dharma* was the king of kings (Br. Up. I. 4. 14 quoted above p. 97 n. 125), that Varuṇa was the chastiser of kings (Manu IX. 245); therefore they appealed to the higher nature and conscience of the king and prescribed that if a king levied an unjust fine, he should offer thirty times of that amount to Varuṇa, throw the amount in water or distribute it among brāhmaṇas (Yāj. II. 307) and that where an ordinary man would incur a fine of one kārṣāpaṇa for a wrong, the king certainly deserves to be fined a thousand kārṣāpaṇas (Manu VIII. 336). The remarks of Medhātithi on that verse quoted below are very interesting, when he insists on the principle that fines for the same wrong should vary with the capacity to pay²²⁷. Even Kauṭilya (IV. 13 last two verses) falls in line with Manu IX. 245 and Yāj. II. 307. But these prescriptions of Manu, Yāj. and Kaut. were counsels of perfection and must have been futile. No king would ordinarily fine himself. Therefore some medieval

227. महाधनत्वाद्दण्डं न विनश्येद्वाना। अधिकृतानां मन्त्रिपुरोहितादीनामनवैर-
कल्पनया न्यूनधिकमात्रः। धनदण्डश्च बाह्येणैवोपेत्य परोक्षमेव वक्ष्याम वा यो तावद्वक्ष्यति
(वत्तावद्?) राज्ञां दण्डधरो हि सः। मेवाः on मनु VIII. 336. Compare अदण्डश्च दण्डमे-
राज्ञो दण्डश्चिद्विदुषोभूतिः। वक्ष्याम प्रदत्तायो बाह्येणैवोपेत्य परोक्षमेव वक्ष्याम
राज्ञो दण्डश्चिद्विदुषोभूतिः। दण्डश्चिद्विदुषोभूतिः परोक्षमेव वक्ष्याम। मेवाः on मनु VIII. 336.
last two verses: तस्माद्वाङ्मनसात्स्वरूपेणानामिति स्थापकरोकमेव न्यायः (व्याप?) इति
दण्डधर्मः। स्वल्प स्वयं दण्डनाशुपेतः। दण्डविशेषः p. 55.

digests like the *Vivādaratnākara* and the *Dandaviveka* (p. 55) interpret these texts as meaning that the word 'rājan' applies here only to subordinate chiefs and not to a king who is independent.

The flourishing state of a kingdom well governed by a good, well-equipped and active king is very graphically described in the *Rāmāyana* (II. 100. 43-46) 'I hope your country is full of hundreds of *caityas* (platforms for sacred trees) and of people who are well-placed; is rendered charming by temples, *śapās* (sheds where water is distributed to travellers *gratis*) and tanks; in which men and women are joyful; which is set off to advantage by merry gatherings and festivals; the whole extent of which is well cultivated; which is full of cattle and free from injury (to beings); which does not depend upon rains alone (for its crops); which is beautiful, free from beasts of prey and all kinds of dangers; which is endowed with mines; which is free from wicked men and enjoys prosperity and happiness'. The *Ādiparva* chap. 109 (cr. ed. chap. 102) also contains a fine description of a well-governed and prosperous country. The country was to be full of public wells, gardens and meeting-halls (*sabhā*). The *Viṣṇu-dharmottara* I. 13. 2-12 contains an ideal description of ancient Ayodhyā. 'It was endowed with hundreds of parks; it celebrated festivals and held gatherings of people; its population was free from disease and had valiant men; it always resounded with the music of lutes, flutes and tabors; it had fair complexioned, charming *hetarai* clever in brilliant conversation; its population was always gay; it resounded with the recitation of the Veda and was endowed with companies of *brāhmanas*; its market rows were full of men that had applied scents to their bodies; there was not a man there who was wretched, dirty or emaciated; it stretched for three *yojanas* on the bank of the *Sarayū* and was ten *yojanas* in the middle.'

CHAPTER VI

DURGA (FORT OR CAPITAL)

Manu IX. 294 places the capital (*pura*) even before *rāstra*. *Medhātithi* (on IX. 295) and *Kullūka* explain that the loss of the capital is a more serious danger than even the loss of some territory, because if the capital, which possesses all the stocks of food, in which are centred the principal elements and the army, is saved, then it is possible to retrieve even lost territory and to protect the country. It is as it were the pivot of the whole machinery of government. Other writers (and even Manu in VII. 69-70) place the capital or fort after the *rāstra*. It is probably due to the geographical situation in North India and the nature of the fighting in ancient times that made the capital and forts of great importance in the several elements of the State. The capital mirrored the prosperity of the country and if properly walled also provided security. *Yaj.* I. 321 says that forts are meant for the safety of the king, the people and the treasury (*janakośātmaguptaye*). The reason for the construction of forts is well put by Manu VII. 74 viz. that a single archer under the shelter of the fort-wall can fight a hundred of the enemy and a hundred can fight ten thousand. The *Pāñcatantra* (I. 229 and II. 14) has a similar verse. *Bṛhaspati* quoted by the *Rājāniti-prakāśa*²²⁸ p. 202 states that the king should construct a fort with walls and a gate for the protection of himself, his wives, the people and the (wealth) collected by him. *Kautilya* (II. 3 and 4) deals at length with the construction of *durgas* and the laying out of the capital in one of them. He says that in the four quarters of the boundaries of the kingdom forts should be built for offering resistance (to the enemy) on ground naturally fitted for the purpose. He speaks of four kinds of forts viz. '*audaka*' (water-protected, which is on an island surrounded by water or on a plain surrounded by low ground), *pārvala* (mountain one, such as a rocky hill or a cave), *dhānvaṇa* (desert fort, on a waterless tract full of thickets or waste land), a forest fort full of wagtalls and water and

228. बुद्धसत्तिराह : आत्मद्वाराधेयकानां सञ्चितानां तु युद्धे । युधतिः कारयेद्दुर्गं
पाकारद्वारसंयुतम् ॥ राजनी. व. p. 202 and राजधर्मकाण्ड p. 28.

thickets of reed. He says that the first two are suited for the protection of populous places and the last two for the protection of foresters. Vāyu 8. 108 refers to four kinds of durgas. Manu VII 70, Śānti 56. 35 and 86. 4-5, Viṣṇudharmasūtra III 6, Matsya 217. 6-7, Agnipurāṇa 222. 4-5, Viṣṇudharmottara II 26. 6-9, III 323. 16-21, Śukra IV. 6 speak of six kinds of forts viz dhanvadurga (which is waterless five yojanas round a raised plain), mahidurga (a land fort, which is surrounded by a wall built of stones or burnt bricks, that is at least twelve feet high and twice as high as it is broad), jaladurga (water fort, surrounded on all sides by deep water), vārksa durga (fort that is surrounded for one yojana on all sides with thorny and tall trees and thorny creepers and bushes), nrdurga (fort that is guarded by a numerous army of four sections on all sides), giridurga (mountain fortress, difficult to climb and with only one narrow access). Manu VII 71 says that the mountain fortress is the best of all, while Śānti 56. 35 states that nrdurga is the most difficult to conquer. The Mānasollāsa (II. 5 p. 78) speaks of nine kinds of durgas (adding those built with stones, bricks and mud). The Parasurāma-pratāpa enumerates eight kinds of durgas (Rājavalabhakāṇḍa, folio 1) and states that the wall of a fort may be of stones or of baked bricks or of mud. Manu VII 75-Śabhā 5. 36 (= Ayodhyā 100. 53), Matsya 217. 8, Kām. IV. 60, Mānasollāsa III 5 (verses 550-555), Śukra IV. 6. 12-13, Viṣṇudharmottara II 26. 20-88 prescribe that forts should possess plenty of arms, grain, drugs and other materials, wealth, horses, elephants, beasts of burden, brāhmanas, artisans, machines (called Śataghnis acc. to Matsya, that kill a hundred), water and fodder. The Nītivakyāmṛta (durga-samuddesa p. 199) says that there must be means of leaving it secretly, otherwise it will be a prison and that no one should be allowed to enter it or leave it without a pass or without being searched. Kauṭ. (II 3) gives detailed instructions for the construction of fort walls, towers, ditches, pillars, lotus ponds and buildings inside the fort, which are all passed over for want of space. Vide the Rājadharmakāṇḍa pp. 28-36 and the Rājadharmakaustubha pp. 115-117 for numerous quotations from the Dharmasūtra of Uśanas, the Mahābhārata, the Matsya, the Viṣṇudharmottara and other works on durga.

In the Rgveda we have frequent mention of cities. In I. 63. 7 Indra is said to have shattered seven cities for Purukutsa

and in II. 30. 8 it is narrated that Indra killed the dasyus and destroyed their cities of *ayas* (copper, *havi dasyūn para āgastīr ni hrīt*). This shows that walled cities were known even at that distant date. There is difference of opinion as to whether the walls were of mud and wood or of stones and bricks. Vide Hopkins in J. A. O. S. XIII. pp. 174-176. The Tai. S. VI. 2. 3. 1 speaks of the three cities of asuras constructed with *ayas*, silver and gold (*havi*). In the *agastīr* as described in the Sat. Br. thousands of baked bricks were required. The excavations at Mohenjo-daro show that walls were built of burnt bricks (Marshall, vol. 1 pp. 15-26). There is no reason to assume that houses, palaces and city walls could not have been built of bricks, simply because no purely Hindu ruins anterior to Alexander have yet been discovered or because Megasthenes describes that Pataliputra had a wall of wooden palisades. One must demur to the remarks of Hopkins on pp. 174-175 of J. A. O. S. vol. XIII. Walls (*prākara*), *toranas* (arched gates) and upper stories (*attślakas*), moats are very often spoken of in connection with capitals in both epics. The gates were sometimes called after cities e. g. in Vanaparva I. 9-10 the Pāṇḍavas are said to have gone out of Hastināpura from the gate called Vardhamānapura.²²⁹ Vide also Āsramavāsi-parva 16. 3. The Mahābhārata states that palaces had dancing halls (*nartanāgāra*) attached to them (Virāṭa-parva 22. 16 and 25-26). Śānti 69. 60 states that the capital was rendered gay by *natas* (players) and dancers and Śānti 86 (4-15) describes how cities were to be founded in durgas, how they were to be full of music, festivals and merry gatherings (*samlīkṣana*) and what stores they should contain. In the Rāmāyana (V. 2. 50-53) Lankā is described as having palaces of seven or eight stories and mosaic pavements. The Brhatsamhita (chap. 53) contains in 125 verses very accurate directions and measurements about palaces, houses &c. (i. e. on *vāstusāstra*). It states that the best kind of royal palace was to be 108 cubits broad, that palaces of 100, 92, 84, 76 cubits may be built, that the length in each case was to be one-fourth as much more as the breadth. It speaks of the dimensions of mansions for the commander-in-chief, ministers, the queen, crown prince, purohita, physician &c. In v. 23 it states that the walls may be of baked bricks or of wood.

229. वर्धमानपुरद्वारादभिनिकम्प पाण्डवाः । उदङ्मुखः सञ्चरतः प्रयुः सह कुण्डमा ॥ वनपर्व 1. 10 ; स वर्धमानद्वारेण निर्वयी नजसाहपात् । आश्रमवासे 16. 3.

The king was to have his capital inside a fort or independent of it. *Mamū* VII. 70, 76, *Āśramavāsi* 5. 16-17, *Śānti* 86. 6-10, *Kām.* IV. 57, *Matsya* 217. 9ff, *Sūkra* I. 213-217 describe where and how a capital was to be built. *Kautilya* (in II. 4) describes at great length how the capital was to be laid out viz. the extent should be demarcated by three royal roads from west to east and three from south to north, the capital should have twelve gates, provided with concealed land and water exits; the chariot roads, the royal roads and roads leading to *drona-mukha*, *sthāniya*, the *rāstra* and pastures should be four *daṇḍas* (16 cubits) in width. He then prescribes the width of roads for various other purposes. Occupying one-ninth of the whole area of the capital, but to the north from the centre of the capital and in the midst of people of all castes the king's own palace should be built facing the east or north. To the north-east of the palace should be the residences of the king's teacher (*ācārya*), *purohita*, ministers and the sacrificial place and water reservoir. He then assigns appropriate places round about the palace for the offices of the several superintendents, to merchants, principal artisans, *brāhmaṇas*, *kṣatriyas*, *vaiśyas*, prostitutes, wool workers, *śūdras* &c. In the centre of the capital were to be constructed apartments for the images of *Aparājita*, *Apratihata*, *Jayanta* and *Vaijayanta* and the temples of *Śiva*, *Kubera*, the *Āśvins*, *Lakṣmī* and *Madirā* (*Durgā*?). The principal gates named after *Brahmā*, *Yama*, *Indra* and *Kārtikeya* were to be constructed. At a distance of 100 bows (400 cubits) beyond the ditch, platforms for holy trees, groves and embankments should be built. The cemetery should be to the east or north but to the south for the higher *varṇas*. Heretics and *cāṇḍālas* should have a place of residence beyond the cemetery. For each group of ten families there must be a well; oil, grain, sugar, salt, medicines, dried vegetables, fire-wood, arms, and other essential commodities should be stored in such large quantities that they might last for several years in case of a siege or invasion. The *Matsyapurāṇa* (217. 9-87) differs from the above description in many ways. It prescribes four wide roads, at the ends of which a temple, the royal palace, the court of justice and the principal gate are to be respectively constructed. Almost the whole of the description in the *Matsya* is quoted by the *Rājantiprakāśa* (pp. 208-213) and also in the *Rājadharmakāṇḍa* pp. 28-36. The former also quotes (pp. 214-219) a long passage from the *Devipurāṇa* with regard to the construction of a *nagara*,

a *pura*, a *batṭa* (market), a *puri*, a *pattana*²³⁰ and the temples of several deities that are to be built in each, the rites to be observed in measuring out the ground for each and accurately finding out of the east and other directions. Pāṇini (VII 3. 14 *prācām grāmanagarānām*) distinguishes between *grāma* and *nagara*, while Patañjali thereon (vol. III. p. 321) explains that *grāma*, *ghoṣa*, *nagara*, and *saṁvāha* are the appellations of different groups or settlements of people. The Vāyupurāṇa (94. 40) separately mentions cities (*purāṇi*) *ghoṣas* (hamlets of cowherds), villages and *pattanas*. Vide Sukranitisāra I. 213-258 for provisions about the laying out of the capital, the palace, the court of justice, other state offices and public buildings, ditches &c. and Yuktikalpataru pp. 22 ff, Vāyu 8, 108 ff, Matsya 130. Śukra (I. 260-267) describes how four royal roads should start from the palace in four directions, how the best, middling and inferior royal roads should be 30, 20 and 15 cubits in breadth; he defines *padya* (a foot-path), *vīthi* (a lane) and *mārga* as respectively equal to 3, 5 and 10 cubits in breadth, that in the capital there should be no narrow street like a *padya* or *vīthi*, that even in villages the public road should be at least 10 cubits in width, that all roads should slope down from their middle and that all houses should face the royal road. For a description of Ayodhya vide Rāmāyana II. 100. 40-42, which says that it was full of valiant men, had strong gates, was full of elephants, horses, and chariots, was inhabited by energetic people of all castes that were devoted to their duties, that had mansions of various sizes, that it was prosperous and had many physicians. From the Rāmāyana (VI. 112. 42 *śikharathyan-tarūpanā*) and the Mahābhārata (Adi. 221. 36) it appears that the roads of the capital were watered. In the Harsacarita (III) Bāṇa gives a graphic description of Sthāpavīśvara (modern Thanesar). For the local administration of the capital, vide the duties of the *nāgaraka* described above (p. 149) from Kautilya (II 36). From the Paharpur plates (dated Gupta *saṁvat* 159 i. e. 478-9 A. D.) it appears that a *nagara-sreṣṭhin* (the chief of the bankers and traders of the capital) was nominated (probably by the king). Vide E. I. vol. 20 p. 59 at p. 61. There was probably a board of the elders of the city (*pauramukhyas* or *pauravṛddhas*

230. Compare ग्रामा वृद्धादिमुखाः, पुरी वृद्धादिमुखाः त एव महत्वा पत्तनानि, दीर्घादीनां वृद्धादिनि। सेटः अर्धग्रामाः। खर्दः पत्तनग्रामा इति। श्रीधर on भागवत IV. 18. 31 व. in राजनीतिको. p. 102. The *शिल्परत्न* (chap. V) defines ग्राम, खर्दक, खर्द, वृद्ध, नगर, राजधानी, पत्तन, वृद्धोक्त, विधिर, खर्दवापर, स्थानीय, विद्वत्क, निम्न, शाखानगर in all 14 (Tri. ed.). The *प्रथम* (X. 92) speaks of ten of these and IX. 10 gives the extent of ग्राम, खर्द, खर्द, वृद्ध, नगर.

as in Kauṭilya) appointed to help the Governor of the capital (*nāgaraka*) in administration. In the Damodarpur copper plates also a *nagarasresthin* is mentioned along with others who were approached for consenting to a purchase of land (E. I. vol. XV at pp. 130, 133, dated Gupta *saṃvat* 129). Megasthenes (in McCrindle's ' Ancient India ', Fragment XXXIV p. 187) describes the city of Palibothra (Pataliputra) and its administration. He says that six committees of five each looked to the affairs of the city and were respectively in charge of (1) industrial arts, (2) entertainment and care of foreigners, (3) inquiries about births and deaths, (4) trade and commerce, weights and measures, (5) manufactured articles, (6) collection of the 10th of the prices of articles sold. Fragments XXV-XXVI (pp. 65-67) inform us that Palibothra was 80 *stadia* in length and 15 in width, that in shape it was a parallelogram, that it was surrounded by a wooden wall with holes for discharging arrows and a ditch in front. Arrian states (pp. 209-210 of McCrindle's ' Ancient India ') that Palibothra had 570 towers and 64 gates. Patañjali in his *Mahābhāṣya* frequently brings in Pataliputra (e. g. in vol. I p. 380 he states that Pataliputra is alongside of the river *Śona*, on Pāṇ. II. 1. 16), in vol. II p. 311 (*vārtika* 4 on Pāṇ. IV. 3. 66) he refers to its walls and to its palaces, in vol. II p. 321 (on Pāṇ. IV. 3. 134). In Fa-Hien's time (399-414 A. D.) the royal palace and halls in the midst of the city built of stone still existed and were so grand that they were then believed to have been the work of spirits (vide Legge p. 77). Vide Rhys Davids' ' Buddhist India ' pp. 34-41 for the ancient Indian capitals in the 7th century B. C.

In the *Bhāgavatapurāṇa* (IV. 18. 30-32) it is narrated that Prthu, son of Vena, first levelled the earth, established human habitations in villages, towns, capitals, forts &c., and that before Prthu people resided where they liked and there were no such groups as villages or towns. Bhṛgu quoted by Śrīdhara according to *Rājanīti-kaustubha* defines *grāma* as the habitation of *brāhmanas*, their hired labourers and *sūdras*, that *khurvaṭa* is on the bank of a river and of a mixed character, one side being a village and the other a town. Saunaka quoted by the *Rājanīti-kaustubha* (pp. 103-4) defines *khota* as a place where *brāhmanas*, *kṣatriyas* and *vaiśyas* reside, that a place where all castes reside is called a town, that *brāhmaṇa* householders should be established on soil that is whitish and has sweet odour, *kṣatriyas* should be established in towns where the soil is reddish and wafts a sweet odour and *vaiśyas* on yellowish soil.

CHAPTER VII

KOSA (TREASURY OR FINANCE)

Kautilya (II. 1) states that a king whose treasury is depleted preys upon the citizens and the rural population and (II. 8) very rightly remarks that all undertakings depend upon *kośa* (financial position of the king), therefore the king must pay the first attention to *kośa*. Gautama (as cited by S. V. p. 46) holds that *kośa* is the basis or support of the other six elements of the State. The Śāntiparva 119. 16 calls upon the king to guard his finances with great effort, since kings depend upon *kośa*, which tends to the prosperity (of the kingdom). Kām. XIII 33 states that it is on the lips of all that the king is dependent on *kośa*. Śānti 133 contains a eulogy of *kośa*. The Viṣṇudharmottara II. 61. 17 says that *kośa* is the root of the tree of State. The two great pillars of the Indian States in ancient India were the revenue and the army. Manu VII. 65 says that *kośa* and the government of the realm depend on the king. I. e. they should be the personal concern of the king. Yāj. (I. 327-328) recommends that the king should personally look into the income and expenditure every day and keep in his treasury buildings whatever is brought by those who are appointed to bring gold and wealth. Kām. V. 77 and Śukra I. 276-278 say the same. The Rājatarāṅgiṇī (VII. 507-508) tells us that king Kalaśa of Kashmir (1063-1089 A. D.) kept accounts like a merchant, closely watched income and expenditure and had a clerk by his side with chalk and *bhūrja* (birch leaf) to write upon. The principal means of filling the treasury is taxation. It is therefore necessary to consider first the principles of taxation as evolved by our writers. The first principle was that the king could not levy, according to the *smṛtis*, taxes at his pleasure or sweet will, that the rates of taxes which the king was entitled to levy were fixed by the *smṛtis* and varied only according to the

231. कोशमूलाः कोशापूर्वाः सवार्थम्भाः । तस्मात्पूर्वं कोशमवेक्ष्यत । कोशिरूपे II. 2. कोशश्च सततं यत्रो वलनमाख्याय राजानिः । कोशमूला हि राजानः कोशो हि द्विकरो भवेत् । शान्ति 119. 16 ; कोशमूलो हि राजेति मयातुः सार्वलीकिकः । कामन्दक XIII. 33. This last occurs in दुष्यु. p. 36; कोशस्तु सर्वथा अभिसंरक्ष्य इत्याह गोतमः । लम्बुल्लव्यान्-कुसीनामिति । स. वि. p. 46.

commodity and also according as the times were normal or there was danger of invasion or some other calamity impending. For example, Gaut. X. 24, Manu VII. 130, Viṣṇu Dh. S. III. 22-23 declare that the king may ordinarily take a sixth part of the grain-crops or produce of the soil, but Kaut. (V. 2), Manu (X. 118), Śānti 87, Sukra IV. 2. 9-10 permit the king to take even one-third or one-fourth part of the crops in times of distress (āpad). It has however to be noted that Kautilya requires the king to beg (yāceta) of the people for this heavy taxation, he employs the word *pranaya* (request) for such demands, such taxation was not to be levied from inferior lands, and he expressly says that such a demand for excessive taxation is to be made only once and not twice in the same distress.²³² Śānti (87. 26-33) contains a specimen of a long address to be given to the people when a king demands higher taxation in danger (such as 'If the enemy invades you, you will lose all including even your wives, the enemy will not restore to you what he robs you of' &c.). The word 'pranaya' occurs in this sense in the Junāgadh Inscription of Rudradāman (E. I. vol. VIII. p. 36 ll. 15-16). Another principle laid down in somewhat poetical and picturesque language is that taxation should be felt by those taxed as light and not heavy or excessive. The Udyogaparva²³³ (34. 17-18) states 'just as a bee draws honey but at the same time leaves the flowers uninjured, so the king should take wealth from men without harming them. One (a bee) may search each flower (for honey) but should not cut the very root just like a garland-maker, but not like a coal-maker'. Manu (VII. 139 and 140) laconically puts the matter thus 'just as the leech, the calf and the bee take their sustenance little by little, so must the king draw from his kingdom annual taxes little by little. Let the king not cut up his own root (by levying no taxes) nor the root of others by²³⁴ excessive greed'. Śānti (88

232. कोशमकोशः मयुष्यकार्यकुच्छः संसृष्टीयात् । जलपदं महान्तमत्यपमार्थं वा देवमातुर्कं मधुतपानं धान्यस्पर्शं सुवीर्यं चतुर्थं वा याचेत् । ... इति कर्षकेषु वक्ष्यते । ... इति व्यवहारिषु वक्ष्यते । ... सकृदेव न द्विः प्रयोज्यते । अर्थशास्त्र V. 2.

233. यथा मधु समादूते रक्षन् दुष्प्राणि वद्वद्वः । तद्वदधोऽन्मनुष्येभ्य आद्यादाविहिसिपा । पुष्यं पुष्यं चिच्छिन्नीत मूलच्छेदं न कारयेत् । माहाकार इवाराभे न यथाह्वारकारकः ॥ उद्योग 34. 17-18. पराशर I. 62 is the same as the last of the two. Compare चम्पद 49 'यथापि भस्मो दुष्कं वज्रगन्धं अष्टोदरे । वलेति रसमाद्याप एवं घामे सुनी चरे ॥'

234. यथा राजा च कर्ता च स्वाहा कर्मणि भागिनो । संक्षेपं तु तथा राजा वनेषाः सहर्तं कराः ॥ मोक्षिन्ध्यादात्मनो मूलं परेषां चापि दुष्णवा । इहाह्वाराणि संक्षेपं राजा संक्षेपदर्शनः ॥ शान्ति 87. 17-18; मनु. VII. 139 has the half मोक्षिन्ध्यात् &c.

4-6) states that the king should draw (taxes) from the realm lightly in the way the bee draws honey from the trees, he should do so in the way of the calf and should not bruise the udders (as the calf does not). Those verses also refer to the action of the leech, of the tigress carrying her cubs between her jaws and the rat gnawing at the feet of sleeping men. These ideas pervaded society so much that the same figure of the bee is instanced as regards the Buddhist bhikkhu's importunity for alms in the Dhammapada (verse 49). The king should act like a gardener who prepares garlands without harming the trees and their leaves and should not act like one who prepares coals from trees (Śānti 71. 20)²³⁵. Manu VII. 139 requires that the king should not through greed tax the subjects heavily, as he would thereby cut off the roots (i. e. prosperity and contentment) of the people, nor should he cut off his own roots (i. e. reduce himself to bankruptcy) by levying no taxes. A third principle of taxation was that when increasing taxes the rise should be gradual and a little at a time (Śānti 88. 7-8). Taxes were to be recovered at a proper time and proper place (Śānti 88. 12 and Kām. V. 83-84)²³⁶. When taxing traders the king should make allowance for the price they had to pay, for the chances of selling the commodity (in his kingdom), the distance over which the merchandise was brought, what they must have spent for their food and condiments and the cost of guard-

235. माताकारीदमो राजन्मय मातृगारिकोपमाः । शान्ति 71. 20; vide शुक्लनीतिसार IV. 2. 113 for the same figure.

236. आद्वयित धने काले विषयपरिद्वन्द्वे । यदा मौः पापते काले दुग्धते च तथा यज्ञा न कामन्दक V. 83-84. One may note the Moscow decree that all male and female peasants between 18 and 45 years were to work six days yearly without pay on roadwork. With the above principles of taxation one may compare Adam Smith's famous canons: (1) the subjects of every state ought to contribute towards the support of the Government as nearly as possible in proportion to their respective abilities i. e. in proportion to the revenue which they respectively enjoy under the protection of the State. (2) The tax which each individual is bound to pay ought to be certain and not arbitrary. The time of payment, the manner of payment, the quantity to be paid ought to be clear and plain to the contributor and to every other person. (3) Every tax ought to be levied at the time or in the manner in which it is most likely to be convenient for the contributor to pay it. (4) Every tax ought to be so contrived as both to take out and keep out of the pockets of the people as little as possible over and above what it brings into the public treasury (vide 'Wealth of nations' ed. by Rogers, 1869, vol. II. pp. 414-416.)

ing the merchandise (Manu VII. 127 = Śānti 87. 13-14)²²⁷. In the case of artisans, before taxing them, the king has to pay regard to the labour and skill involved and to the necessities of life required by them (Śānti 87. 15). Every one, however poor, must contribute something to the finances of the realm. Manu (VII 137-138) says that even a very poor man who maintains himself by following some occupation should be asked to contribute every year something in the nature of *kara* (a tax), while workers (like cooks), artisans (like blacksmiths), śūdras who subsist by manual labour (like porters) should be asked to contribute one day's work to the king in a month. Vide Gaut. X. 31-34, Viṣṇu Dh. Ś. III. 32 for the same. But Śūkra IV. 2. 121 says that workers and artisans should do one day's work for the king gratis in a fortnight. Gaut. X. 34 adds that the king must supply them with food on the day they work gratis. The importance of a gold and silver reserve was well understood. Kām. (IV. 62-64) says²²⁸ that the king's *kośa* should have many sources for filling it, but few outlets of expenditure, it should be full of all desired kinds of wealth, guarded by trusty officers, rich in pearls, gold and jewels, it should have been acquired according to *śāstric* rules, be capable of bearing great strain of expenditure and that *kośa* is to be preserved only for the purpose of securing the two goals viz. *dharma* and *artha*, for affording maintenance to the servants engaged by the king and as a safeguard against calamities. Śūkra IV. 2-3 remarks that *kośa* is accumulated for the upkeep of the army and for the benefit of the people and for performing sacrifices. Gaut. X. 28-29, Manu VII. 128, VIII. 306-308, Nār. (prakīrṇaka 48) and others say, as has been already stated, that taxation is meant for the protection of the subjects and that it is the king's wages (*vedant*) for the protection he affords. Manu IX. 305 compares the king taking taxes to the sun that produces vapour from the seas (in order to return it in the form of rain, as the Raghuvamśa I. 18 very happily puts it). Kām. (V. 78-79) enumerates eight principal sources (called *aṣṭavarga*) of filling the treasury

227. विक्रयं कपयश्चान्नं भक्षं च सपरिच्छदम् । योगक्षेमं च संयत्नं धनिनां कारयेत्तराजः ॥ शान्ति 87. 13. Manu VII. 127 reads भक्षं च सपरिच्छदम्, उत्तर्गतिं दानवृत्तिं च शिलां संकेतं चासकृत् । शिष्टं वलिं कारानेवं शिल्पिनः वलिं कारयेत् । शान्ति 87. 15.

228. बह्वादानोऽप्यभिःशावः सपातः पुनितद्वेषतः । ईदमितद्वयसंपूर्णो ह्यथ आग्नेरधिष्ठितः ॥ सुष्माकनकरत्नाद्यः पितृवैरामहोचितः । धर्मोन्नितो न्ययमहः कोषः कोषज्ञसंमताः ॥ धर्मोन्नितोत्पाद्यार्थं भूस्थानी नरनाय च । आपदर्थं च संरक्षणः कोषः कोषज्ञा सदा ॥ काम. IV. 62-64 quoted in राजर्षिभिरुत्पाकर P. 34.

through the action of the heads of the departments viz. agriculture, trade-routes (both on land and water), the capital, water embankments, catching of elephants, working mines and collecting gold &c., levying wealth (from the rich), founding towns and villages in uninhabited spots. The *Mānasollāsa* (II. 4 verses 539-540 p. 77) advises the king to spend ordinarily three-fourths of the yearly revenues and save one-fourth. Śūkra (I. 315-317) prescribes that the king should save 1/6 of his total annual income and should spend 1/3 of the whole on the army and one-twelfth each on charity (to the learned, the poor and helpless &c.), ministers, inferior officials, and his private purse or expenses. Śūkra IV. 2. 26 requires the king to have as much stock of grain as would be required for three years' consumption in his country. In IV. 2. 13 he sets before the king the impossible ideal that his treasury should be so full that he can support his army for 20 years if no taxes from agriculture or tolls were raised or no fines were recovered. The *Mānasollāsa* (II. 4. 394, 397 p. 64) says that the king's treasury should be always full of gold, silver, jewels, ornaments and costly clothes, that pure gold in the form of *niṣkas* (coins) or bars or ornaments should be held in the treasury. Kauṭ. (IV. 3) as stated above permitted the king in famines to make the rich disgorge their wealth. In V. 2 he remarks that if after making special requests for additional taxation, when the treasury is empty and some danger is impending, to the cultivators, merchants, wine-sellers, prostitutes and those who rear pigs, poultry, cattle &c., the king may request the rich to give as much of their gold as they can and the king may honour them by bestowing on them a post at his court, or the dignity of an umbrella, a turban or some decoration in return for their wealth²³⁹. He permits the king in calamities to take away the wealth of the corporations (*saṅghas*) of heretics and of temples also, to set up all of a sudden on one night a god or a platform (*caitya*) for a holy tree or a sacred place for a man of miraculous powers and provide for fairs and merry gatherings there and secure the necessary money²⁴⁰. He

239. सारतो वा हिरण्यमाह्वयन्वाचेत । यद्योपकारं वा स्वयन्ता वा बहुपदरेतुः स्वाम-
ल्लभेद्वनविप्राश्चैषां हिरण्येन प्रपच्छेत् । अर्थशास्त्र V. 2.

240. Compare note 164 above about the Mauryas who wanting money set up images, according to Patañjali. The *Rājatarāṅginī* (V. 166-177) describes the exactions of king Śaṅkara-varman of Kashmir (883-902) A. D. He plundered 64 temples under the pretext of supervision. He imposed taxes on *gṛahakṛtya* (i. e. on *upanayana*, marriages &c.). In the 11th century king Harṣa of Kashmir plundered most of the temples (*Rājatarāṅginī* VII. 1090).

recommends many other tricks and dodges for securing money, which are passed over. Perhaps the only redeeming feature of these devices is that Kautilya is careful to point out that they were to be employed only against the seditious and the irreligious and not against others (V. 2 'evam dūṣyogavadhārmikeṣu varṣeṣu netareṣu'). Vide Nitivākyaśmṛta (kośa-samuddeśa) p. 205 for similar provisions to replenish a depleted treasury. The Parāśurāmapratāpa (Rājavalabhakāṇḍa, folio 27 b) quotes a verse which recommends resort to alchemy for replenishing the treasury^{240a}. Sukra IV. 2. 11 advises the king when in financial difficulties to promise interest to the rich and take their wealth and to return it with interest when the difficulties are got over²⁴¹. Śānti (88. 29-30) asks²⁴² the king to honour the wealthy men in his kingdom, since they constitute an important element of the realm and are the most eminent among all beings and to request them 'confer along with me favours on the people'.

Several reasons are assigned for people's payment of taxes to the king. Gaut. X. 28 says that they should do so because he protects them. In some places the idea put forward is that taxes are the wages (*vetana*) of the king and that the subjects made a contract with the king Manu to that effect. Vide Śānti 67 and 70. 10, Baud. Dh. 8. 1. 10. 1, Nār. 18. 48, Kaut. I. 13 (quoted on p. 21 above). Kāt.²⁴³ (verses 16-17) states that as the king is the owner of the earth but not of other kinds of wealth, he is entitled to get the sixth part of the produce of land and that since human beings reside on land they are declared to be owners (in ordinary parlance, but they have only a qualified ownership). Several kinds of taxes are mentioned in the dharmasāstras, arthasāstras and the inscriptions. The oldest

240a. पातुवाचद्वयमैव विविधैर्वर्षेण्यम् । ताभ्यो साधयेत्स्वर्णं राज्यं बहुन साधयेत् ॥ परशुरामः. (राज. folio 27 b).

241. धनिकेभ्यो भूतिं दत्वा स्वायत्तां वज्रं हरेत् । राजा स्वायत्तभुक्तिर्नैस्तत्संवासात्प्रादिकम् ॥ सुक्र IV. 2. 11.

242. धनितः पूजयेज्जितं वानाच्छादनभोजनैः । वक्रग्याथासुपुष्टीर्षं यजाः सह मयेति वै ॥ अश्वमेधहृदयं धनितो नाम भारत । ककुद् सर्वभूतानां धनस्थो नाथ संशयः ॥ शान्ति 88. 29-30.

243. कात्यायनः । दृष्टव्यं तु स्मृतं राजा मान्यद्रव्यस्य सर्वदा । तत्फलस्य हि बहुभागं प्राप्नुयामान्यथैव तु । भूतानां तज्जिवासिवात्स्वामित्वं तेन कथितम् । राजमीदृशे. p. 271. Vide H. Dh. vol. II. pp. 865-869 on the question of the king's ownership of land. राजमीदृशे. explains 'तज्जिवासिवात् भूनिवासिवात् । स्वामित्वं राज इति शेषः'. I interpret differently.

word for a tax paid to the king is 'bali'. Rg. VII. 6. 3²⁴⁴ and X. 173. 6 speak of the common people as 'balihrt' (bringers of *bali*, tribute or tax for the king). In the Tai. Br. (II. 7. 18. 3) it is said 'the people bring bali to him'. In the Ait. Br. (35. 3) the *vaśga* is characterized as 'balkrt' (payer of taxes to another), since brāhmanas and ksatriyas were mostly exempt from taxation. Vide Prof. Hopkins' 'Social condition of the ruling class' J. A. O. S. vol. XIII p. 89 and Fieck p. 119 (as to the evidence of the Jātakas on taxation). Manu VII. 80, Matsya 315. 57, Rāmāyaṇa III. 6. 11, Viṣṇu Dh. S. III. 22 employ the word 'bali' in the sense of the 6th part of the produce of land that the king levied as tax. In the Rummīndei Pillar Inscription of Aśoka (Corpus I. I. vol. I. p. 164) it is said that the village of Lummini was made free from the payment of 'bali', but had to pay one-eighth share.²⁴⁵ Here 'bali' is contrasted with 'bhāga' which is a general term. The word 'kara' appears to mean a tax in general. Vide Āp. Dh. S. II. 10. 26. 10, Manu VII. 128, 129, 133, Vas. 19. 23, Viṣṇu Dh. S. III. 26-27. The word 'bhāga' (share) is also general and means the king's dues on land, trees, drugs, cattle, wealth &c. Vide Manu VII. 130-131, VIII. 305, Viṣṇu Dh. S. III. 25. This meaning of 'bhāga' is ancient. We saw above (p. 112) that *bhūpadugha* is one of the ratnins of the king. The Amarakośa treats *bali*, *kara*, and *bhāga* as synonymous.

The word 'sulka' generally means the tolls or customs duties levied from vendors and purchasers on merchandise carried into or out of the kingdom (Śukranītisāra IV. 2. 108). The Mahābhāṣya on the vārtika 'āyasthānebhyaṣṭhak' on Pāṇ. IV. 2. 104 gives *śaulkika* and *gaumika* as examples, indicating thereby that sulka or toll was levied as a source of income (*āya*) at the toll-gate.

The principal and perennial sources of income to the state were three viz. the king's share of the produce of land, tolls and customs duties, fines levied from wrongdoers or defeated litigants (vide Śānti 71. 10 and Śukra IV. 2. 13). From this and from Manu X. 119-120 it appears that the principal tax-payers

²⁴⁴. स निवृत्त्या बहुवो यद्वा अग्निर्विश्वक्रे बलिहृतः सर्वोभिः ॥ ऋ. VII. 6. 5 : अथो न इन्द्रः केवलीविशो बलिहृतकस्तु ॥ ऋ. X. 173. 6 : इत्येवमै विदो बलिम् । ते. अ. II. 7. 18. 3.

²⁴⁵. लुमिनिग्राम उबलिक (उबलिकः) करे अठमामिदे (अठमामिकः) च । Corpus I. I. vol. I. p. 164.

were agriculturists, traders, manual workers and artisans. In Manu VIII 307 quoted in the Dandavivēka of Vardhamāna (p. 5) it is said that the king who, without affording protection, levies *bali*, *kara*, *śulka*, *pratibhoga* (*pratibhāga* in the printed *smṛti*) and *daṇḍa* (fines) goes at once to hell and Vardhamāna explains *kara* as the dues recovered every month from villagers and city-dwellers (every month or twice a year in Bhādrapada or Pausa according to Kullūka), *śulka* as the twelfth share recovered from traders, *pratibhoga* as the dues in the form of fruits, flowers and vegetables presented every day. A few remarks on these and other taxes must be made here. Manu VII 130, Gaut. X 24, Viṣṇu Dh. S. III 22, Mānasollāsa (II 3. 163 p. 44) and several others prescribe that the king is entitled to the 6th, 8th or 12th part (only sixth in Viṣṇu, also 10th in Gaut.) of the yield of grain from land. Bṛhaspati and the Viṣṇudharmot-tara²⁴⁶ (II 61, 60-61) quoted in the Rājānitiprakāśa (pp. 262-263) make it clear under what circumstances these different shares are to be taken: viz. the king takes 1/6 of *śūkadhānya* (awned or bearded grain like wheat and barley), 1/8 from *simbidhānya* (grain in pods), 10th part from crops grown on land that was fallow for many years, 1/8th from lands sown in the rainy season and one-sixth from lands that have spring crops. The tax was to be paid once every year or once in six months according to the custom of the country. The varying rates prescribed by Kautilya have been indicated in describing the duties of the *śitādhyakṣa*. Sukra (IV, 2 121-122) gives a salutary rule that if a cultivator constructs a tank, a well or an artificial water-course or brings under cultivation land previously fallow, the king should not levy a tax thereon till the person making the expenditure has recovered twice the amount spent by him. Kauṭ. (II 1) provides that the king may show favour (*anugraha*) to the cultivators by supplying them with seed, cattle and money and that they should return the advances by easy instalments and that the king shall bestow favours and remissions (*parihāra*) in such a way that they might tend to swell the treasury and not tend to its

246. विष्णुधर्मोत्तरे । शूकधाम्येषु षड्भागे शिखीधान्येऽथैकपादमम् । राजा चतुर्थे-
माद्यादेशकालावुत्पत्तः ॥ शूकशिख्यतिरिक्ते धान्ये मधुग्रीतमोको द्वादशो दशमो वा भागः ।
तथा च वृषत्यतिः । दशादशे वृषतेभागे दद्यात्कृषीकम् । क्षितावृषोपसम्भाष्य कृष्य-
माणावृषाक्रमम् ॥ ... स एवाह । देवसिधत्या बलिं दद्यात्पूर्वं यन्मासवर्षिकम् । एव धर्मः
समाकृपात् कीनाशानां दुरातनः ॥ राजनीतिक. pp. 262-263 and राजधर्मशास्त्र p. 63
(for last two verses).

depletion.²⁴⁷ It has already been stated that according to the *śūnrtis* the ordinary share of the king was one-sixth, but that in case of the danger of invasion or similar calamity he was allowed to raise it to one-fourth. Megasthenes (Fragment I, p. 42) says that no person is permitted to own land and that besides the land tribute people pay into the royal treasury a fourth part of the produce. This shows that the tax on land was very heavy in the times of Candragupta probably owing to his wars to drive away the Greeks and the huge armies that he had to employ. Manu VII. 130, Gaut. X. 25, Viṣṇu Dh. S. III. 24, Mānasollāsa (II. 3. 163 p. 44) hold that the king is entitled to the 50th part of the cattle reared by herdsmen and of the interest earned by those who lend money at interest. This last appears to be analogous to modern income-tax. The Śūkrantīsāra IV. 2. 128 makes the tax to be $\frac{1}{2}$ on the interest earned by money-lending.²⁴⁸ Viṣṇu adds cloth to these two. Manu VII. 131-132, Gaut. X. 27, Viṣṇu Dh. S. III. 25, Viṣṇudharmottara II. 61. 61-63 and Mānasollāsa lay down that the king is entitled to a sixth part of trees, meat, honey, clarified butter, perfumes (like sandal-wood), medicinal plants (like *gudūci*), rasa (salt &c.), flowers, roots (like turmeric), fruits, leaves (like palm leaves), vegetables, grass, hides, articles manufactured from bamboo slips, earthenware, articles prepared from stones. Viṣṇu adds deer hides to these.

Sulka is of two kinds, what is levied on goods carried by land and what is levied on goods carried by water (Mīt. on Yāj. II. 263). Gaut. X. 26 and Viṣṇu Dh. S. III. 29 state that the sulka is 1/20th part on merchandise for sale (bought and sold in the country itself) which is interpreted by some (like Haradatta and Nandapandita) as meaning that 5 per cent of the price of articles sold should be taken by the king as tax, while the *Rājantiprakāśa* (p. 264) explains that the king is entitled only to five per cent of the difference between the cost price and the sale price of merchandise. Manu VIII. 398 also is susceptible of these two interpretations, as the commentaries of Medhātithi and Kullūka show. The Viṣṇu Dh. S. (III. 29-30) prescribes that the king takes one-tenth on merchandise produced in his own country and one-twentieth on goods imported from a foreign

247. धान्यपशुशिरषैवैवानुसृष्टीवासावसुखेन दयुः । अनुग्रहपरिहारं चैव्य
कोपसह्यिकरी दद्यात् । कौटिल्य II. 1. p. 47.

248. वार्युषिकाद्य कोसोदाहृ इतिविशेषे हरेन्दुः । शुक्र. IV. 2. 128.

country. Yaj. II. 261 says that the *sulka* on goods is twentieth part of the prices of the goods. Kaut. (II. 21) in his chapter on the superintendent of tolls (*sulkādhyakṣa*) sets out several rules, of which a few interesting ones are given here. Commodities intended for marriage or taken by a bride from her parents to her husband or meant as presents or for the purpose of sacrifices or the *accouchement* of women or for the worship of gods, or for the ceremonies of *caula*, *upanayana*, *gottāna*, or for the observance of a *vrata* or for the consecration of a person for a sacrifice and for other special ceremonies shall be allowed to go free of tolls. Whatever commodities would cause harm to the realm or are useless should be destroyed; whatever is of great benefit and seeds not easily available should be allowed to be imported without charge²⁴⁹. He further says (II. 22) that *sulka* is levied on exports and imports of merchandise and that on imports the tax will be one-fifth of the price of the commodities (as a general rule) and prescribes varying rates ($1/6$, $1/10$, $1/15$, $1/20$, $1/25$) on different kinds of articles. In II. 28 (on the superintendent of shipping) Kautilya gives further rules some of which have been already noted. He prescribes rules for ferries also, viz. that *brāhmanas*, ascetics, children, very old people, sick men, messengers, pregnant women are to be provided with free passes by the superintendent enabling them to use the ferries. A man with a load and small animals were to pay one *māṣa* at a ferry, a cow or a horse two *māṣas* and so on. The *Mānasollāsa* (II. 4. vv. 374-376 p. 62) prescribes that the king should well guard all harbours (*velā-pura*) that are near the sea, that when the boats of sailors residing in his own country return to the harbour the king should charge one-tenth (of the price of goods brought) as the duty and that when foreign boats are driven to his harbour by an unfavourable wind, the king should confiscate all their merchandise or may give a little to the owners of those boats. In this connection a very interesting inscription may be referred to. The Motupalli pillar Inscription²⁵⁰ of the Kākatiya king Ganapatideva (of

249. राजप्रीहकारं मानुषमुचिद्व्यावृत्तं च यत् । सहीयकारमुच्यते कुप्यादृशीर्जं तु दुर्लभम् ॥ कौटिल्य II. 21, verse at end.

250. पूर्वराजानां पोतवाचेपरम्पदेष्ट्रादेशान्तरमनुतेषु दुर्वातेन समापतितेषु भग्नेष्वतीर्थ-
संगतेषु च संयुक्तानि करिद्वयगणनादनि वस्तुनि सज्जलानि यदादुपहरन्ति । वयमपि वाणे-
भ्योपि सहीयं धनमिति सद्गुणान्कृतमहासाहसैर्यस्तेभ्यः वस्तुशुल्कादृते कुपया कीर्त्यं
धर्म्यं च सर्वं विहराम इति । तत्पुस्तकपरिमाणं, then a Telugu passage about the
dues. Vide E. I. vol. XII. p. 195.

1244-45 A. D.) issues (E. I. vol. XII p. 195) a charter of security (abhaya-sāsana) to the sailors who ply between towns in different countries, islands and continents: 'when ships that made voyages from one country to another were driven or were shattered or touched at a place that was not meant as a place of call, owing to unfavourable winds, former kings forcibly took away all commodities therein such as gold, elephants, horses &c.; but we, considering that wealth is dearer than life itself, have with kindness decided to give everything except the fixed *śulka* to those sailors who undertake the great venture of crossing the sea, so that thereby we shall secure fame and righteousness; the *śulka* fixed is as follows'. About *śulka* to be levied on goods brought by the sea the Baud. Dh. S. (I 10. 15-16) prescribes that it is 10 per cent of the cargo except one best article (which is totally exempted). In the Kharepatan grant of the Śilāra king Ratṭarāja dated śake 930 it is provided that one golden *gaḍiyāna* was levied as duty on each vessel that came from another country (*dvipāntarāyāta-vahitrāt*) and one golden *dharana* had to be paid on each vessel coming from the district of Kandalamūliya excepting Cemulya (modern Chaul) and Candrapura. Vide E. I. vol. III, p. 292 at p. 301. Śukra (IV. 2. 109-111) lays down some very reasonable rules viz. on the same commodity *śulka* is to be taken in the same country by the king only once and never more than once; the king may take either 1/16, 1/20 or 1/32 from the vendee or vendor; no *śulka* is to be taken from the vendor when he has to sell his goods at the same price at which he bought them or for less than the cost price; the king should always take from the buyer the proper *śulka* after seeing what profit he is going to make. Nār. (sambhūya-samutthāna verses 14-15) lays down that whatever is to be used by śrotṛiyas (brāhmanas learned in the Vedas) for domestic purposes is exempt, but not what they may employ in trade; the gifts received by brāhmanas, the property of stage-players, whatever is carried on a man's shoulders—on all these no *śulka* must be levied. The exemption of brāhmanas and others from taxation has already been dealt with in H. Dh. vol. II. pp. 143-145. Gaut. X. 9-12, Āp. Dh. S. II 10. 26. 10-16, Vas. I 42-46 and 19. 23-24, Manu. VIII. 394 exempt a learned brāhmana, the women of all varnas, all boys before the signs of puberty appear, all those who stay with a teacher for study, ascetics who are intent on dharma, śūdras that do menial work such as washing the feet of higher varnas, the blind, the deaf and dumb, the diseased, the cripple, an old man of 70 years or

more. Though these really required more protection than most people, humanity and higher feelings made them exempt from taxes from very ancient times. The claims to exemption were probably exaggerated and not respected in practice. For example, Nārada (VI 14) states that the king is not to levy tolls or customs duties on articles required by śrotriyaś for domestic use but if they engaged in trade they had to pay taxes on merchandise.²⁵¹ The Mīt. on Yāj. II. 4 states that the six exemptions mentioned in Gaut. (VIII. 12-13) apply only to a very learned brāhmaṇa and not to all brāhmaṇas. Manu. VII. 133 provides that a king even when he has lost everything should not levy a tax on śrotriyaś and relying on this the Vaijayanti explains Viṣṇu Dh. S. III. 26 as referring only to learned brāhmaṇas. The Rāmāyaṇa (III. 6. 14)²⁵² states, differing from other authorities, that the king shares one-fourth of the merit of *muniś* (ascetics) dwelling in his kingdom. There was a corresponding liability on the king: viz. he shared half and half in the demerit due to the sins committed by the subjects that are not properly restrained by him (Yāj. I. 337). Manu and Viṣṇu. Dh. S. III. 28 and Viṣṇudharmottara II. 61. 35 say that he reaps the sixth part of the sin of his subjects.

Kaut. in II. 15 mentions numerous kinds of taxes or dues that were levied by the king. It is not possible to explain many of the terms used by him. In the ancient inscriptions, when making grants of a village and the like, it is usual for the kings to specify the exemptions from taxes and dues that went with the grant. Such exemptions were called *parihāra*, which word occurs in Kautilya and also in the Hathigumpha Inscription of Khāravela (in the 2nd century B. C., E. I. vol. xx at p. 9) where we read '*bamhanānam jātīm parihāram dadāti*'. In certain early records even, these exemptions are said to be eighteen, e. g. in the Hirabadagalli plate of Śivaskandavarman (E. I. vol. I. p. 6) and²⁵³ the Omgudu plate of Vijayaskandavarman

251. सदा श्रोत्रियवर्गानि सुलभान्पातुः वज्रानता । वृक्षोपयोगि वृक्षैश्च न तु वाणिज्यवर्गमपि ॥ नाद्व. VI. 14; बाह्यनेत्यः करादानं न कुर्यात् । विष्णुधर्मसूत्र III. 26, on which वैजयन्ती says 'परंतु श्रोत्रियेभ्यः । शिदमानो ... करमिति मानवात् ।'

251a. यत्करोति परं धर्मं सुनिर्मूलकलाशनः । तत्र राज्ञश्चतुर्नामः दया धर्मेण रक्षतः ॥ रामायण, अरण्य 6. 14.

252. The passage in the plate of Śivaskandavarman (E. I. vol. I. pp. 8-9) is rendered by Dr. Bühler as 'this garden is to be free from taxes, free from the taking of sweet and sour milk, free from troubles about

(E. I. 15 p. 250). Vide H. Dh. vol. II pp. 864-865 and notes thereon for grants containing names of numerous taxes that were remitted to the grantees and 'Pandyan kingdom' by Prof. Nilkanta Śāstri p. 217 on the same subject.

Fines as a source of revenue will be discussed in the next section about 'law and justice'. The king had numerous other sources of income. Kaut. (II. 12) describes the duties of the superintendent of mines. Every thing dug up from mines belonged to the king (Visnudharmasūtra III. 55). According to Manu VIII. 39 and Medhātithi thereon the king is entitled to a half (or some share $\frac{1}{2}$, $\frac{1}{3}$ &c.) of the ore dug out of mines, as he is the lord of the earth and gives protection. In modern times under sec. 69 of the Bombay Land Revenue Code, Government have a right to all mines and minerals. The Parāśurāmapratāpa^{222a} quotes a verse: 'Brahmā arranged that the king was (to be) the owner of all wealth and specially (wealth) that is inside the earth,' while Kāt. (16-17) says (vide note 243) 'the king is declared to be the lord of the land, but never of other kinds of wealth; therefore he should secure the sixth part of the fruits of land, but not otherwise at all. Since human beings reside on it (land) their (qualified) ownership thereof has been declared'. For further discussion of the theory of the king's ownership of all land, vide H. of Dh. vol. II. pp. 865-869. The State itself manufactured salt, took its share in salt manufactured by private persons and levied $\frac{1}{2}$ as State dues on imported salt. Kautīlya mentions ten kinds of revenue from mines. The

(Continued from the last page)

salt and sugar (alogaḥśacchobham=alavaṇa-guḍa-kṣobham), free from taxes, forced labour, ... free from the taking of the oxen in succession, free from the taking of grass and wood, free from the taking of vegetables and flowers: with these and other immunities of eighteen kinds it must be exempted &c.' (evamādikehi atthārasaṣṭipurihārehi). Vide Vilavatti grant of Pallava king Simhavarman for a long enumeration of taxes collected from villages in South India in E. I. vol. 24 p. 296 and a copperplate grant of the Śilāhāra king Aparājita dated *saka* 913, where in granting a garden to a brāhmaṇa occur the following words 'साङ्गद्वः सङ्गद्वदशापराधः पथाननि-
धामैकदोषकायः इतरसमस्तादुवादीयक-कुमारिस्ताहसपुत्रिद्वन्द्वदोषसन्निधः पूर्वद्वन्द्व-
दायकद्वन्द्वदोषजितः समस्तापर्यायसहितः द्वन्द्वः in 'Important Inscriptions from Baroda' vol. 1 edited by Mr. A. S. Gadre (p. 55 at p. 61). कुमारिस्ताहस appears to mean the 'fine levied for violating a virgin or her modesty'.

222 a. धनानामिन्द्रा राजा बद्धना परिकल्पितः । द्युतानां विरोधेन भर्तासौ विद्वधाधिपः ॥ g. in परशुरामप्रताप folio 27a.

Mānasollāsa (II. 3, verses 332 and 361) asks the king to guard mines of gems, gold and silver and declares that the Creator made the king the ruler over all wealth and especially over what is inside the earth. Rudradāman (150 A. D.) boasts that he filled his treasury by means of *balli*, *śulka* and *bhāga* levied according to the *sāstras* and that his treasury overflowed with heaps of gold, silver, diamonds, *lapis lazuli* and other gems (E. I. vol. VIII p. 36 at p. 44). Kaut. (IV. 1) says that those who sweep the dust (near mines &c.) should get one-third of the valuable things found and the king should get two-thirds and all jewels. The king had also monopolies in certain matters. He alone could catch elephants. Kaut. (II. 31-32) and Mānasollāsa (II. 3, pp. 44-58) deal with this matter, the latter describing several methods of catching elephants. Medhātithi²²³ on Manu VIII. 400 says that kings have a monopoly as to elephants because it is well-known that they are most useful to them and he specifies certain monopolies such as those in saffron, silken cloth and wool, horses, pearls and jewels. Megasthenes (Fragment XXXVI p. 90) states that a private person was not allowed to keep an elephant or a horse and that those animals were held to be the special property of the king.

The king recovered a sort of road cess through officers called *antapāla* (guardians of borders or boundaries) viz. 1½ pāna on each cart loaded with merchandise, half a pāna on each head of cattle, ¼th pāna on minor quadrupeds, and one *māṣa* on a load carried on a man's shoulders (Kaut. II. 21 p. 111). Śukra IV. 3. 129 permits for the repairs to the roads a tax on those who use roads. Revenues were raised in numerous other ways such as by charging for stamping weights and measures, by fees levied from keepers of gambling halls, from players, singers and musicians, from prostitutes, from forests and pastures &c. Brhat-Parāśara X. p. 282 allows the king in a financial crisis to use even temple funds and make them good when freed from his difficult position. Similarly it allows the king (in difficulty) to take the wealth of usurers, of low people,

223. वानि बाण्डानि राज्ञोऽपयोगितया यथा हस्तिनः काश्मीरेषु कुङ्कुमपाण्डेषु वङ्गोन्मादीनि यवोन्मेषाश्च द्वाजिनाम्बेषु मणिसुकादीनि । मेधा. on मनु VIII. 400. The passage as printed by Mandlik and Gharpure is corrupt. We should rather read यथा हस्तिनः । काश्मीरेषु कुङ्कुमं पाण्डेषु वङ्गोन्मादीनि. Saffron is still a monopoly in Kashmir. 'सरकपाण्डुपावकाः सारविभारं लभेयम् । इति राजा राजं च । अर्थशास्त्र IV. 1.

of heretics and prostitutes, as the continuance and prosperity of temples and the others depend upon the king.²⁵⁴

The *Rājataranginī* (VII. 1008) notices that a tax was levied on Kashmirians performing śrāddha at Gayā. An inscription of Vikramāditya V found near Gadag dated *śaka* 934 (1012-13 A. D.) refers to taxes levied on upanayana, marriages, vedic sacrifices &c. (E. I. vol. 20 p. 64). It appears that the king of Anahilavād, Siddharāja (1094-1143 A. D.), levied a tax on pilgrims going to Somanātha at the frontier town Bāhuloda and it is said that the tax yielded 72 lakhs of rupees a year, which Siddharāja remitted for the sake of and at the intervention of his mother; vide Bom. G. vol. I. part 1 p. 172 and *Prahaṇḍha-cintāmaṇi* (p. 84, Tawney). The amount is probably very highly exaggerated in order to glorify Siddharāja, but this shows that the yield of the pilgrim tax must have been substantial. The *Mānasollāsa* in its great desire to help the king with the accumulation of wealth advises the king even to resort to alchemy.²⁵⁵

A question may be asked: what were the means of preventing a king from being over-exacting and tyrannical in his taxes? Kaut. (VII. 5. pp. 276-277) cites at great length the causes that lead to the impoverishment of the subjects, to their being greedy and disaffected. Among these he mentions²⁵⁶ 'not paying what ought to be paid and exacting what ought not to be exacted, not punishing the guilty and severely punishing the guilty, not protecting the people against thieves and robbing them of their wealth'. He then states that when the subjects become impoverished they become greedy and when greedy they become disaffected and voluntarily go over to the side of the king's enemy or destroy their own king. In another

254. वृषस्य पक्षि जातानि देवद्वयानि शोकवत् । आद्याय रक्ष चात्मानं ततस्तत्र च तत् क्षिपेत् । वित्तं वार्युषिकानां तु कर्तव्यं न वापि यद्वयेत् । वाप्यष्टमणिकारितं हरकालो न किलिबन्धी । देवताह्वयवाप्यष्टमणिका नणिकादयः । वणिग्वार्युषिकाः सर्वे स्वस्थे राजनि सुस्थिताः ॥ बृहत्पराक्षर X. p. 282.

255. धातुवाद्ययोगैश्च विविधैर्धनैश्च । ताद्रेण साधयेत् स्वर्णं रौप्यं वज्रेण साधयेत् ॥ मानसोल्लास II. 4, verse 327 p. 63. Vide n. 240 above.

256. अयद्वानैश्च देवानामदेवानां च साधनेः । अयद्वानैश्च दण्डवानां दण्डवानां चण्डदण्डनैः ॥ ... अरक्षणेन चोरेभ्यः स्वानां च परिमोचनेः । ... राज्ञः यमावाक्यस्याम्नां योगक्षेमविधायापि । यक्षतीनां जपो दानो वैराग्यं चोपजायते ॥ क्षीणाः यक्षतयो लोभं तुभ्या यान्ति विरागताम् । विरका वाग्ययानि वा मर्तारं भ्रष्टि वा स्वयम् ॥ कौटिल्य VII. 5.

place Kaṭīlyā (XIII. 1) suggests²³⁷ that a conqueror may employ spies who should encourage the subjects of his enemy suffering from famine, depredations of thieves and wild tribes to tell their king, 'we shall beg the king for favours (remission of taxes or help in the way of seeds &c.) but if he does not agree to bestow favours we shall go to another country'. So the threat of disaffection and migrating to another country were the deterrents against the tyranny of heavy taxation according to Kaṭīlyā. Śānti 87. 36 says^{237a} that if the vaiśyas (*gominah*, who bore the brunt of taxation) were neglected, they may disappear from the country and dwell in forests. Manu (VII 111-112) warns kings who through folly rashly oppress their kingdoms that they may ere long lose their own lives and those of their relatives and also their kingdoms. Yāj. (I. 340-341) is even more emphatic and says that the king who seeks to increase his treasury with wealth extracted by unjust means from his realm loses his wealth in no time and meets destruction along with his relatives. 'The fire springing from the wrath caused by the harassment of the subjects does not cease without burning the family, the wealth and the life of the king.' Kātyāyana (v. 19) harps on the spiritual consequences: 'the king who unjustly takes from his kingdom taxes, fines, share of crops and tolls, incurs²³⁸ sin.' Śukra²³⁹ (II 319-321 and 370) emphasises the keeping of daily, monthly and yearly accounts and the entering of the several items of income on the left side of the account and of those of expenditure on the right. The Nītivākyaṁṛta^{239a} refers to the appointment of auditors when there is discrepancy in the items of income and expenditure.

237. दुर्मित्रस्तोनाद्विदुषातेषु परितजानपदास्तुसाहकृतः सन्निधौ बभूवुः । राजानमनुग्रहे वाचमानो निरनुग्रहाः परत्र गच्छामः । इति । की. XIII. 1.

237a. उपेक्षिता हि नश्येयुर्गोमिनोऽरुणवाणिनः । तस्मात्तेषु विशेषेण वृत्तपूर्वं समाचरेत् ॥ शान्ति 87. 36.

238. अन्वायेन हि यो राजाकारं वृष्टं च पार्थिवः । सत्यभारं च दुरुक्तं चाप्यावर्त्तितं स पापमाहुः ॥ कात्यायन q. in राजनीतिव. p. 276.

239. वस्तरे वस्तरे वापि मासि मासि दिने दिने । हिरण्यपद्मधाण्यादि स्वाधर्मि स्वाधर्मकर्म ॥ वराधीनं कृते यन्मध्यमसंज्ञं धर्मं च तत् । ... आपमादौ लिखोत्सयन् स्वयं वक्ष्यात् पामतम् । वाने वार्यं यत्तुं दृष्टे वज्रनामे च लेखयेत् ॥ शुक्रमीलितसार II. 321, 370.

239a. आपव्ययविधित्तयोः कुशलकरणकार्यपुरुषेभ्यस्तद्विनिश्चयः । नीतिवाक्यामृत- p. 189 (अमापनसूत्रेण).

CHAPTER VIII

BALA (THE ARMY).

Bala is also called *danda* in Kaut. and elsewhere. According to Sumantu *danda* means 'punishment, corporal or monetary' and the army with its four arms is included by Sumantu under *kośa* (acc. to S. V. p. 46).²⁶⁰ In the Rgveda we have frequent references to armies, weapons, battles &c. The word *senāni* occurs in Rg. X. 84. 2 where *Manyu* (martial Fury) is invoked to be the Commander.²⁶¹ Rg. VI. 75 is full of references to bows, arrows, armour, bow-strings, quiver, charioteer, horses, chariots &c. Kām. (XIII. 34-37) states that the king possessed of a sound financial position increases his depleted army, supports his own subjects and is depended upon even by his enemies. All the following result from the possession of a (powerful) army: viz. increase of the wealth of one's friends and enemies and of the (king's) territories, prompt attainment of objects that seemed distant, protection of what is already secured, destruction of the armies of the enemy, the keeping together of one's army. Most authorities agree in saying that troops are of six kinds viz. *maula* (hereditary), *bhṛta* or *bhṛtaka* or *bhṛtya* (hired troops), *śreni* (guild troops), *mītra* (troops of an ally or friendly power or feudatories), *amitra* (troops that once belonged to the enemy), *atavi* or *ātavika* (wild tribes as troops). Vide Kaut.²⁶² IX. 2 (first sentence), Kām. XVIII. 4, Agnipurāṇa 242. 1-2, Mānasollāsa (II. 6, verse 556 p. 76). The first three works say that each earlier variety of troops is superior to each later one. *Maula* troops corresponded to the modern standing army, since Kaut. (IX. 2) prefers them on the ground that they depend on the king for maintenance and are being constantly drilled. They most probably consisted of persons who and whose ancestors got tax-free lands in lieu of military service. The *Sabbāparva* 5. 63 appears to refer to four kinds (omitting *śreni* and *amitra*) and *Yuddhakāṇḍa* 17. 24 refers to five (omitting *śreni*).

260. दण्डः अतुरङ्गसैन्यं न भवति । अपराधादुन्मारेण शारीरोर्ध्वदण्डः धरिकल्पनीयः । अथमभिसन्धिः सुमन्तुमते अतुरङ्गसैन्यस्य कोश इवान्तर्भाव इति । स. वि. p. 46.

261. अग्निरेव मन्थो निवर्षितः स हस्व सेनाधीनः सन्तुरे ह्य एषि । अ. X. 84. 2.

262. मौलिकृतकर्मणि, मित्रामित्राद्वर्षितानां समुदायकालाः । ... पूर्वं पूर्वं श्रेयां श्रेयः सेनावर्षितुम् । कौटिल्ये IX. 2.

The *Āśramavāsikaparva*²⁶³ (7. 7-8) names five kinds (except *amitra*) and states that maula and mitra armies are superior to the rest and hired troops and śrenī troops are each other's equals. This division of armies into various kinds is mentioned in the grant of Dhruvasena I of Valabhi in Gupta-Valabhi year 206 (E. I. vol. XI p. 106, where the king is said to have acquired the kingdom with the help of maula, bhṛta, mitra and śrenī armies). Mānasollāsa defines the ātavika²⁶⁴ army as consisting of *niṣādas*, *mlecchas* and similar castes dwelling in the vicinity of mountains and *amitra* troops as soldiers who once belonged to an enemy king but being defeated were taken captive and made slaves. According to the *Rājantīratnākara* (p. 38) 'aribala' means 'troops that come to a king after leaving the king's enemy'. Kām. XVIII. 7 says that the ātavika troops are, by nature, irreligious, greedy, *auśryas* and non-observers of truth. They correspond to the *penholders* and freebooters of later times. The reasons why hereditary and other troops are superior to *amitra* and ātavika varieties are explained at great length by Kaut. IX. 2 and Kām. XVIII. 5-9. Kaut. (IX. 2) states that an *amitra* army led by an ārya is superior to wild tribe troops. Both of them are out for plunder and in case no plunder can be had or when there is a disaster they may prove as dangerous as snakes. By *śrenī-bala* he has in mind the organized bands of soldiers to whom he refers elsewhere as '*vārtāśāstropajīvinah*' (vide p. 89 above). As it is not unlikely that members of trade-guilds either themselves learnt the profession of arms or engaged soldiers for the protection of their merchandise and property, these could be pressed into his service by a king in case of need and were distinguished from the hereditary army and hired troops as '*śrenī-bala*'. Differing from the *ācāryas* that troops composed of *brāhmanas*, *ksatriyas*, *vaiśyas* and *śūdras* are superior for enlistment in the order of the castes, Kaut. holds that an army of *ksatriyas* well-trained in the wielding of arms or an army of

263. आश्रमवासिकं बलं राजा मौलं मित्रबलं तथा । अटवीबलं भूतं चैव तथा श्रेणीबलं यमो ॥ तत्र मित्रबलं राजय मौलं चैव विशिष्यते । श्रेणीबलं भूतं चैव तुल्ये एवेति मे मतिः ॥ भाष्यमात्मिका 7. 7-8.

264. सर्वतोपागच्छसंपादिनिषादम्लेच्छजातिकम् । अधमं तत्समाद्यपालं बलमाहविजं दुर्गैः ॥ शासकान्तु समाक्रान्ता दासभावमुपस्थिताः । तेषां बलं तु विज्ञेयममित्रबलं दुर्गैः ॥ मानसोल्लास II. 6. verses 559-560 p. 79.

vaiśyas and śūdras having greater numerical strength is better than an army composed of brāhmaṇa soldiers, since an enemy may win over the latter army by prostrating himself before them.²⁶⁵ Vide H. Dh. vol. II. pp. 122-123 for discussion on the question whether brāhmaṇas could become soldiers. In Udyogaparva 96. 7 (cr. ed. chap. 94) it is said that king Dambhodbhava every day asked in the morning whether there was any śūdra, vaiśya, ksatriya or brāhmaṇa equal or superior to him in armed conflict. That shows that soldiers of castes other than ksatriyas were not unheard of in the Epic age. Kām. IV. (63, 65, 67) says that the hereditary army (pitr-paitāmaha) should consist mostly of ksatriyas. In the Maliya copperplate of Mahārāja Dharasena II (252 Valabhi samvat i. e. 571-73 A. D.) Bhatārka, the founder of the Valabhi dynasty, is said to have secured the kingdom with the help of maula, bhṛta, mitra and śrenī troops (Gupta Inscriptions p. 165). Śukra (II. 137-139) says that the soldiers may be śūdras, ksatriyas, vaiśyas, mlecchas or of mixed castes, provided they are brave, restrained, well-built, devoted to their master and their dharma, and hate the enemy. Śānti (101. 3-5) describes in what respects soldiers from Gāndhāra, Sindhū and other countries and Yavana and Deccan soldiers excel, remarks that brave and strong men are to be found everywhere (verse 6) and that men from the border (i. e. *bhīllas* and *kanvatas* according to Nilakantha) are desperate fighters, would never run away from battle and so should be preferred for enlistment in the army (verse 19). The Yaśastilaka III (pp. 461-467) describes the characteristics of Northern Indian (auttarāpatha), Deccan (daksīnatya), Dramila (South Indian), Tihut (Tairabhukta) and Gurjara soldiers. An army was said to be composed of four parts, viz. elephants, horses, chariots and foot-soldiers (caturāṅga bala). Kām. XVIII. 24 says that *bala* is sixfold, viz. the four sections of infantry, cavalry, chariots and elephants together with *mantra* (line of policy) and *kośa* (treasury). In Śānti. 103. 38 the army is said to have six āṅgas (the well-known four plus *kośa* and roads for traffic). According to Kāṭīya (II. 2, VII. 11) and Kām. XIX. 62 the destruction of

265. आङ्गणस्य विपरीतपक्षे हस्तेन पादो तेजःसाधन्यात् पूर्वपूर्वमेवः संन्यापितुमिच्छा-
चार्याः । नेति कौटिल्यः । मणिपतेन आङ्गणवत् परोमिहारेण । महारणविचारिणीतं तु सवि-
वत् श्रेयो बहुलसार्थं वैशद्यवृत्तमिति । कौटिल्य IX. 2.

the enemy's forces and victory depended on elephants.²⁶⁴ Śānti-parva (100. 24) says that an army in which the infantry predominates remains firm and that cavalry and chariots are all right when there is no rain. Śānti (59. 41-42) enumerates eight elements of the army viz. the well-known four (elephants etc.), vīstī (labourers or porters who gave free labour and were only fed but were paid no wages), boats, spies, and guides (deśika).²⁶⁵ Vide Śānti 121. 44 also. In the Mahābhārata elephants do not, except in rare cases, play any role in the fighting that went on, while chariots and the other arms of an army are described everywhere. In the Virāṭaparva (65. 6) Vikarna was seated on an elephant when he attacked Arjuna; Bhīṣmaparva 20. 7 refers to Duryodhana as riding an elephant and (95. 32-33) Bhagadatta is described as seated on an elephant when he attacked Bhīma. In this respect the Epic carries on the vedic tradition. Megasthenes (Fragment 1 p. 30) notes that in ancient India elephants were trained for war and turned the scale of victory. Vast armies were kept by ancient kings and emperors. When Śatrughna started against the demon Lavana he had an army of 4000 horses, 2000 chariots and 100 elephants with him (Rāmāyana VII. 64. 2-4). In the Daśakumāracarita VIII the cynical jester Vihārābhadrā reminds his master that the latter had 10000 elephants, three lakhs of horse and numberless foot-soldiers (B. S. S. p. 133, of ed. of 1919).

266. इस्तिपधानो विजयो राज्ञाम् । कौटिल्य II. 2; इस्तिपधानो हि पराभीकषः । कौटिल्य VII. 11; मायेषु हि स्तिपिभुजा विजयो निषद्वस्तस्मादुत्ताधिकमलो वृषतिः सदा स्यात् । कामन्दक XIX. 62; मुख्यं इन्तिपलं राज्ञो समरे विजयैरियम् । वस्माज्जिज्वले कार्या बहवो हिरदा युये ॥ मानकौज्ञास II. 8. verse 578 p. 90; वतो मामास्ततो जयः । इषम्, p. 42; बलेषु इस्तिनः प्रधानमङ्गं रैरवयैरवायुषा इस्तिनो भवन्ति । नीलिवा- (बलस-सुदेश) p. 207. The four feet, the two tusks, the trunk and the tail are the eight weapons of an elephant. Though the Buddhābhūṣana (p. 42) contains a glowing eulogy of elephants, the नीलिवाश्यामुत holds that elephants, if not properly trained, cause loss of wealth (because they eat vast quantities of fodder and grains) and of lives (they trample down their own soldiers through fright) "अशिक्षिता इस्तिनः केवलमर्थयाचकः" 22. 5 p. 208. The पञ्चस्तिपक III. p. 491 notes "न विभीता मजा येषां तेषां ते सुव केवलम् । कुशापाये विनाशाय रणे चामवधाय च ॥". This has often been illustrated in battles against early Moslem and other invaders e. g. vide Elphinstone's History of India (5th ed. of 1866) p. 309 (the fate of Dahir king of Sindh against Mohammed bin Qasim, when the former's elephant was struck with a Freball) and p. 329 (Anangpal against Mahmud of Ghazni) and also Cambridge History of India, vol. III. (1928) pp. 5 and 16 for the same.

267. रथा नामा हयाश्चैव पादाताश्चैव पाण्डव । विटिर्मावधराश्चैव देशिका इति षाष्टमम् ॥ अङ्गान्तेतानि कौरव्य पकाशानि वत्सव्य तु । शान्ति 50. 41-42.

Megasthenes (in Fragment XXVII p. 68) speaks of the camp of Sandrakottos (Candragupta Maurya) that had 400000 men; notes (in Fragment LVI) that the king of Palibothra had in his pay a standing army of six lakhs of foot-soldiers, 30000 cavalry and 9000 elephants (p. 141, McCrindle), that the king of Horatae (Surāstra) had 150000 foot-soldiers, 5000 cavalry and 1600 elephants (*ibid* p. 150) and that even the Pāṇḍyan kingdom ruled by women had 150000 foot and 500 elephants (*ibid*, p. 147). Vide Beal's 'Buddhist Records &c.' vol. I. p. 213 for the armies collected by Hargā in his march against the murderer of his elder brother (viz. 5000 elephants, 2000 horse and 50000 foot-soldiers) and the vast armies that he had after six years of conquest viz. 60000 elephants and 100000 cavalry. In the Āsvamedhikaparva (60. 14-20) it is narrated that when Droṇa assumed the post of commander-in-chief the Kaurava army had been reduced to 9 *akṣauhīnīs* from eleven, that only five were left when Karna became *Senāpati* and the Pāṇḍavas had then only three left and under Śalya's command there were only three *akṣauhīnīs* and the Pāṇḍavas could oppose to him only one. In reply to a question from Dhṛtarāṣṭra Yudhiṣṭhira states that in the great war the total number of warriors killed in battle came to the colossal figure of 16600200006 (Śtriparva 26. 9).²⁶⁸ The Udyogaparva gives (155. 24-26) the following table for an *akṣauhīnī*: 500 elephants, 500 chariots, 1500 cavalry and 2500 foot-soldiers constituted an army called *senā*, 10 *senās* = *prānā*, 10 *prānās* = *vāhinī*, 10 *vāhinīs* = *dhvajinī*, 10 *dhvajinīs* = *camū* and 10 *camū*s = *akṣauhīnī*. The Kauravas had eleven *akṣauhīnīs* and the Pāṇḍavas had 7. If we take the table in Ādi 2. 19-22 one *akṣauhīnī* contained 21870 elephants, the same number of chariots, 65610 horses and 109350 foot-soldiers.²⁶⁹ But if the other tables be followed then the numbers may be much larger still. Another table furnished by Udyogaparva 155. 28-29 is: 55 men constituted *patti*, 3 *pattis* = *senāmukha* or *gūlma*, 3 *gūlmas* = *gana* and there were *ayutas* (10 thousands) of *ganas* in the army of the Kauravas. The Ādiparva (2. 19-22)

268. दशायुतानामयुतं सप्तशतानि च विंशतिः । कोट्यः पटिञ्च पद् चैव हस्तिनायन-
सुधे हताः ॥ अर्धपर्यं 26. 9.

269. एको रथो गजश्चैको नराः पञ्च पदावयः । त्रयस्य तुरगावयव्यैः पत्तिरित्यभिधी-
यते ॥ पत्तिं तु विंशत्यभिधायः सेनामुखं वृषाः । त्रीणि सेनामुखान्येको गूलः इत्यभिधी-
यते ॥ त्रयो गूलानां गणः नाम वाहिनी तु यणावयः । दशस्यत्रयस्तु वाहिन्यः पुननेति-
विंशत्यर्थः ॥ चतस्रस्तु पुनरातिव्यतिरिक्तसंख्यस्तु नीकिनी । अनीकिनीं दशशतानां वाहुरकीर्तिनीं
वृषाः ॥ आदि 2. 19-22.

differs from both tables in some respects. The Udyogaparva 155. 22 further notes that each horseman was surrounded by ten men as attendants (*narā dāsa hayaścāsan pādaraksāḥ samantataḥ*). Though throughout the centuries the infantry was theoretically and in practice more numerous than cavalry, not much importance seems to have been attached to them as compared with chariots or horsemen. The lexicon called *Vaijayanti* says that *patti* consists of three horses, five foot-soldiers, one chariot and one elephant, that three *pattis* are equal to *senāmukha* and that *senāmukha*, *gūḥa*, *gana*, *vāhini*, *pṛtanā*, *camū*, *anikini* represent each three times as many as the preceding one and that 10 *anikinis* are equal to an *akṣauhiṇi*. The *Nītiprakāśika*²⁷⁰ gives a table of groups from *patti* to *akṣauhiṇi* and remarks that each of these groups had in turn numerous supporting men e. g. each elephant was followed by a hundred horsemen and a thousand foot-soldiers and each horseman was supported by a thousand foot-soldiers (VII. 3-10). *Manu* VII. 192 refers to battles on water also. From references in the *Mahābhārata* it appears that chariots had only two wheels. Vide *Bhīṣma* 98. 47, *Dronaparva* 154. 3, *Sāhya* 16. 24 (*Śāineyo dakṣiṇam cakram Dhṛtadyumnas-tathottaram*). Two noted warriors were told off to guard the two wheels of the chariot of the principal commanders and are called 'cakra-rakṣau' (vide *Bhīṣma* 54. 76, 108. 5, *Drona* 91. 36, *Karna* 11. 31, 34. 44). Chariots of great warriors were drawn by four horses e. g. *Adi* 198. 15, *Udyoga* 48. 50, *Drona* 145. 81. *Udyoga* 83. 15-21 describe the chariot of *Kṛṣṇa* and *Udyoga* 140. 21 states that chariots had small tinkling bells attached to them and also screens of tiger-skin. The *Rg.* contains very graphic descriptions of chariots. Chariots were generally drawn by two horses in the vedic age (*Rg.* V. 30. 1, V. 36. 5, VI. 23. 1) and had two wheels, but the chariot of the *Aśvins* is described as having three wheels (*Rg.* I. 118. 2, I. 157. 3, X. 41. 1). *Ghaṭotkaca*, however, had eight wheels to his chariot (*Drona* 156. 61, 175. 13). The *Sukranitisāra* (II. 140-148) mentions another method of grouping the army. Five or six foot-soldiers made a *patti* over which there

270. पत्तिः सेनामुखं सुहृन् दणो वै वाहिनी ततः । दृतमा चम्बनीकिन्दो तदध्याधौ-
हिणी स्मृता ॥ ... पञ्चमेहिण्योः सप्तैः कमादाहया दधोत्तरम् । अनिकिनीं दशमुपानाह-
रक्षीहिणीं दध्याः ॥ नीतिप्रकाशिका VII. 3 and 10. ; compare सिंहवै पञ्चपादाह्वं पदेकर-
षट्पुत्तरम् । सेन्यं सा पञ्चभस्त्राह्वैः सुहृन्पादपुर्वाधाम् । सेनामुखं सुहृन्मणौ वाहिनीं
दृतमा चम्बुः । अनिकिनीः पनीकिन्दः पुनर्वसौहिणी दश ॥ verses 57-58 of the अष्टाध्यायाष्ट
in the सुनिकाण्ड of वैजयन्ती.

was an officer called *pattipā*, over 30 *pattipālas* there was the *gaulmika*, over 100 *gaulmikas* was the officer called *śatānika* who had as his assistants an officer called *anūśatika*, a *senāni* and a *lekhaka* (scribe); the officer over twenty elephants or horses was called *śūlpaṇi* (compare modern "naik"). Each of these officers should have a distinctive badge indicative of their position. Ayodhya 100. 32 (= Sabhā 5. 48) asks: 'I hope you give at the proper time pay and rations to your soldiers according to their deserts and do not delay payment'. Both Nār. (sambhūya-22) and Br. state that among persons who work for hire the best is the soldier. The *Manasollāsa* (II. 6. 566-569 p. 80) describes that the chiefs of the hereditary army should always be honoured by the king with presents of jewels, ornaments, costly clothes and sweet words and sumptuous provision for their maintenance should be made by bestowing on them a village, or two or more villages and heaps of gold, while hired soldiers should be paid every day or every month or once in three, four or six months or once in a year according to the needs of the king. Megasthenes (Fragment XXXIV p. 88) describes the organization of the Indian army: 'A third governing body directs military affairs, of which there were six divisions with five members to each. One co-operates with the admiral of the fleet, another with the superintendent of bullock trains, the third division has charge of foot-soldiers, the fourth of horses, the fifth of war chariots and the sixth of elephants.' In medieval times chariots appear to have become obsolete. In the graphic descriptions of armies contained in the *Harsacarita* (particularly in the 7th *ucchvāsa*) war chariots are conspicuous by their absence. The *Mahābhārata* often speaks of horses from the countries to the north-west of India as the best; vide Sabhā 53. 5 (for Kāmboja and Gāndhāra horses), Udyoga 86. 6 (horses from Bālhi), Droṇa 125. 25 and Sautika 13. 2 (Kāmboja horses). The *Harsacarita* II speaks of the best horses as coming from Vanāśyu, Āratī, Kāmboja, Sindhudesa and Pārasika. Śukra lays down certain practical rules about the army (IV. 7. 379-390). He says that the soldiers should be encamped outside the town or village but not far from it, that no money-lending should be allowed between the soldiers and the village people, that the king should open separate shops for goods required by soldiers, that no army should be encamped at one place for more than a year, that soldiers should not enter the village without the king's permission, that receipts should be taken from soldiers

for payments made to them and they should be furnished with a writing about their pay. Some of these rules are very old. The *Udyogaparva*²⁷¹ 37. 30 mentions among persons with whom no contractual transactions should be entered into, the king, the king's servants and soldiers.

The *Arthasāstra* contains an elaborate discussion (in IX. 1-7 and X. 1-6) about the organization of the king's army, the proper time and place for starting on an invasion, internal and external troubles and calamities and measures against them, means of dealing with traitors and enemies, religious remedies (worshipping gods and falling at the feet of brāhmanas, magical rites based upon the *Atharvaveda*) against misfortunes like fire and flood, epidemics, famine &c., encampment (*akandhāvāra*) of armies, treacherous and strategic fighting, proper battle grounds, encouragement to one's own army, free labourers and their work, different arrangements or formations (*vyūhas*) of armies. Considerations of space prevent any treatment of these matters. But a few notable points will be set out here. A king may invade his enemy's country either in *Mārgaśīrṣa* (when the crops sown in the rains are ready) or in *Caitra* or when the enemy is suffering from some calamity. *Sānti* (100. 10-11) says the same thing. Internal trouble arises when any minister, *purohita*, *senāpati* or the crown prince is angry or dissatisfied with the king, who should get rid of such trouble by giving up his own fault or by pointing out the danger arising from an enemy. If the crown prince causes trouble he should be kept in confinement or killed, if there is another son of good character. The trouble caused by a provincial Governor or the officer in charge of boundaries (*antapāla*), the chief of wild tribes or a conquered king is termed external. The king should meet it by setting up one against the other. The encampment of an army is to be made on a site declared to be the best according to the science of buildings and measured by the *nāyaka* (the chief of the army), carpenter and astrologer, the encampment being circular, square or rectangular and having four gates, six roads and nine divisions. Disputes, drinking, holding merry gatherings (*saṁāja*) and gambling should be prohibited in the camp and the system of passes should be enforced (X. 1). *Vanaparva* (15. 14, 19) also refers to the system of passes and the fact that

271. सुधी राजा दुष्कली राजभूषणः दुको ज्ञाता विधवा वादयुवाः सेनापती चोदय-
वधुतिरेव स्वयदारेषु वर्जनीयाः स्मरन्ते ॥ उद्योग 37. 30 (cr. ed. 37. 28).

dancers and musicians were driven away, when Dvārakā was besieged by Śālva. From Udyoga 151. 58 (cr. ed. 149. 53), 195. 12-19 (cr. ed. 196. 13-19) it appears that markets, prostitutes, conveyances, oxen, machines, arms and physicians accompanied an army and that the camp (*senāniveśa* or *skandhāvāra*) of Duryodhana looked like the capital itself and was five *yojanas* in extent. Physicians with surgical instruments, blunt instruments (like tweezers), medicines, curative oils and bandages in their hands and women (nurses) looking after the food and drink of the army should stand behind the soldiers uttering encouraging words²⁷² (Kaut. X. 3). The Bhīṣmaparva 120. 55 also states that doctors well-versed in extracting splinters or arrow-heads (from the body) approached with their surgical instruments to extract the darts from Bhīṣma's body. The duties of the labourers (*visṭi*) were to examine the camp, roads, bridges, wells, and river *ghats*, to carry machines, weapons, armour, utensils, fodder, to remove from the battle-field wounded men along with their weapons and armour.²⁷³ Each commander had some distinguishing device as his banner e. g. Bhīṣma had a golden tāla tree as his standard (Bhīṣmaparva VI. 17. 18, tālena mahatā Bhīṣmaḥ pañcatārepa ketuna). In X. 6 Kautīlyā speaks of several formations (*vyūhas*) called *daṇḍa*, *bhoga*, *maṇḍala*, *asaṇihata* and the subdivisions such as *gomūtrikā*, *makara* &c. In Kam. XVIII. 48-49, XIX. 40 ff., Manu VII. 187-191, Nītiprakāśikā, chap. 6 and in the Mahābhārata many *vyūhas* are described. Vanaparva (285. 6-7) refers to Rāvapa's arrangement of his army according to the rules of Uśanas and of Rāma's army according to Bārhaspatya rules. The Āsrama-vāsikaparva 7. 15 refers to the formations called Śakata, Padma and Vajra described in the work of Uśanas. Kautīlyā X. 6 also refers to Ausanasa and Bārhaspatya arrangements of armies. Drona 75. 27, 87. 22-24, Karpaparva II. 14 and 28 mention certain *vyūhas* like *Makara*, *Śakata* &c. Vide also Mānasollāsa II. 20 verses 1170-1181 pp. 134-135, Agnipurāṇa 242. 7-8 and 42-73 for *vyūhas*. Though Kautīlyā recommends all sorts of tricks and treachery for securing a victory, the

272. चिकित्सकाः शस्त्रपन्थागदस्त्रमेहवज्रहस्ताः । क्षिप्रश्वास्त्रगामशस्त्रिणः । दुरुपाणाद्वज्र-
पंजीषाः दृढतस्तिष्ठेयुः । कौटिल्य X. 3 । उपातिष्ठन्त्यो वैसाः । अत्योद्धरणकोविदाः । भीष्म
120. 55.

273. शिबिरमार्गसितकूपसौर्यशोधनकर्मपन्थादुपावरणैश्च करणद्वारावहनमायोधनाय
महर्णावरणमतिविज्ञापनमिति चिकित्सार्थम् । कौ. X. 4.

Mahābhārata holds up a high ideal. The *Bhīṣmaparva*²⁷⁴ 21. 10 remarks that conquerors do not secure victory so much by their armies and prowess as by truthfulness, freedom from cruelty, the observance of dharma and energetic actions. The *Śānti-parva* (95. 17-18) states that it is better to die while fighting according to the rules of dharma rather than obtain a victory by wicked actions.

In the *Bhīṣmaparva* (I. 27-32) certain rules of war agreed upon between the Kauravas and the Pāṇdavas are set out, such as one should fight only with one similarly equipped (i.e. a foot-soldier with a foot-soldier and so on), one should not kill a soldier who is already in combat with another, or who has turned back from fight or is without armour. *Ap. Dh. S. II. 5. 10. 12*, *Gaut. X. 17-18*, *Yāj. I. 326*, *Manu VII. 90-93*, *Śānti 95. 7-14, 96.3*, *Śānti 98. 48-49*, 297. 4, *Dronaparva 143. 8*, *Karna 90. 111-113*, *Sauptika 5. 11-12*, 6. 21-23, *Sankha* (quoted by the *Mit.* on *Yāj. I. 326*), *Baud. Dh. S. I. 10. 10-12*, *Vṛddha-Hārita VII. 226*, *Brhat-Parāśara X. p. 281*, *Śukra IV. 7. 354-362*, *Yuddha-kāṇḍa 18. 27-28* contain rules of war dictated by noble sentiments of humanity and chivalry. Some of these (that will bear comparison with the conventions of the Geneva and Hague Conferences) are set out here. *Gaut. (X. 17-18)*²⁷⁵ states: 'no sin is committed by injuring or slaying men in battle excepting him who has lost his horse, charioteer or weapons, him who joins his hands (in supplication for life), whose hair are dishevelled (in flying), who turns away from the field, who sits down, who climbs an eminence or a tree (in flight), except envoys or messengers, except him who declares himself to be a cow or a brāhmaṇa'. *Vṛddha-Hārita VII. 216* exempts spectators. *Manu (VII. 90-93)* declares "one should not fight with treacherous

274. न तथा बलवीर्याभ्यां जयन्ति विजिगीषवः । यथा सत्पादुशस्त्राभ्यां धर्मैरेवोद्यमेन च ॥ भीष्म 21. 10. धर्मैः न विजयन्ते जयः पापकर्मणा । नाधर्मैश्चरितो राज्ञः सद्यः कलमि वीरिव । मूर्खानि च यथाशास्त्रं युद्धं समधिगच्छति ॥ शान्ति 95. 17-18.

275. न दोषो हिंसायामाहवे । अथवा शस्त्रमारुपायुधकृताञ्जलिप्रीत्येकमपराद्धस्योपविष्टश्चलद्वुष्टापि रुद्धद्वुष्टयोश्चाह्वयवादिभ्यः । गौतम X. 17-18; न पानीयं विषमं न सुखानं शोषामहो मुखनं नावर्माणं स्वर्गं न शिर्यं न करेणुं न बाजिनं न साराधिनं न सुतं न हुनं न बाह्वर्णं न राजाभामराजा हन्वाह् । शङ्ख ५. in *मिताक्षरा* on *या. I. 326*; यद्धाञ्जलिपूरे वीर्यं पाचनं क्षरपागलम् । न हन्वादायुशं चार्धमसिं शत्रुं परस्म्य ॥ अत्रो वा यदि वा हतं परेषां शरणं यतः । अतिः प्राणान् परिपश्य रक्षितव्यः कृतात्मना ॥... एवं दोषो महानयः यथा नामरक्षणे । अथवा चोपशस्त्रं च बलवीर्याभ्यामज्ञानम् ॥ रामायण VI. 18. 27-28, 31; न यथा युज्यते लोकं सुतामाविह धर्मतः । सौमिकपर्व 5. 11; युद्धयातो न हन्तव्यो न च स्त्री नैव वृद्धतः । युद्धयुद्धसुखं चैव तवास्मीति च यो न वेद ॥ शान्ति 98. 48-49.

(or concealed) weapons, or with barbed or poisoned weapons or with weapons the points of which are blazing with fire. Let a fighter not strike one who has climbed on an eminence, nor a eunuch, nor one who joins the palms of his hand (in supplication), nor one with flying hair (in flight), nor one who sits down or says 'I am thine', nor one who is asleep, nor one who has lost armour, nor one who is naked or disarmed, nor one who is merely looking on without taking part in the fight, nor one who is fighting with another foe, nor one whose weapons are broken, nor one who is afflicted with sorrow, nor one seriously wounded, nor one who is in fear, nor one who has turned to flee.' Śaṅkha adds that a soldier should not kill another while the latter is drinking water or taking his meals or is taking off his shoes, nor should one kill a woman, a female elephant, nor a charioteer, nor a bard nor a brahmana nor should one who is not a king (or noble) kill one who is a king. Baud. Dh. S. I. 10. 10 forbids the use of poisoned or barbed arrows (*kurin*). Śānti 95. 11 also does the same. Śānti (95. 13-14) enjoins that even an enemy soldier, when wounded, should be treated with medicine and allowed to go when his wounds are healed.²⁷⁶ Śānti adds that a soldier should not kill boys or old men nor from behind nor one who holds a blade of grass in his mouth (as a mark of submission). These rules, though probably ideal and not strictly followed in every case, are far more humane as compared with the practice in modern warfare when non-combatants are killed from the air even at night without warning. In ancient times non-combatants went generally unmolested, to which Megasthenes bears testimony when he says (Frag. I. p. 32) 'Tillers of the soil even when battle is raging in the neighbourhood are undisturbed by any sense of danger, for the combatants allow those engaged in husbandry to remain quite unmolested.' Manu VII. 32 allows a king to harass his enemy's country, but Medhātithi on VII. 32 asks the invader to save his enemy's people if possible (particularly brāhmanas). The rule in *gṛdāyuddha* (fight with maces or clubs) was that no blow was to be struck below the navel (Salyaparva 60. 6). But this rule was violated by Bhīma when he struck Duryodhana on the thigh with his mace. Duryodhana recounts (in Salya 61) all the bad deeds of Kṛṣṇa and the Pāṇḍavas and the only reply that Kṛṣṇa makes is that he too was guilty of

276 मरुतको विपक्षश्च कुरुतपो हतबाहुनः । विदितव्यः क्वात् कश्चिदपि पापं वा स्वयुदे भवत् ॥ निवर्णश्च स मोक्षश्च एव धर्मः सनातनः । शांति 95 13-14.

numerous breaches of morality and the chivalrous rules of war (such as the slaying of Abhimanyu by many engaging him at one time). The general rule was that fighting ceased when the sun went down (Bhīṣma 49. 52-53). But in Dronaparva 54 and 163. 16 ff we have a description of night battles and it is provided that chariots, elephants and horses should carry lamps.

It has already been shown how it was the duty of a ksatriya and of every soldier to fight and die in battle rather than run away. A fighting spirit was inculcated by holding out several rewards. One was the acquisition of booty and territory (Gaut. X. 41, Manu VII. 206, Bhagavadgītā II. 37); others were the satisfaction of having done one's duty as a ksatriya (Gītā II. 31-33), honour and fame (Gītā II. 34-35), heaven and other-worldly rewards (Yāj. I. 324, Manu VII. 88-89), protection of brāhmanas (Āp. Dh. S. II. 10. 26. 2-3). Viṣṇu Dh. S. III. 44-46 have already been quoted above (p. 58). The Śānti (98. 40-41) states that a soldier who runs away from the field falls into Hell. Yāj. (I. 324-325) declares that those who, while fighting with weapons that are not treacherous (poisoned &c.) for the sake of the land (of their master or of the enemy) die in battle without turning back from it go to heaven like *yogins*, that each step of those who do not flee even when their comrades have been killed is equal to a solemn sacrifice (like the *Aśvamedha*); the king (the master) takes away all the merit of those who run away from the battlefield and are then killed. Manu VII. 95 contains the same idea. These remarks were applicable not only to ksatriya soldiers, but to soldiers of all castes who maintained themselves by following the profession of arms. Vide *Rajanītiprakāśa* p. 407. *Parāśara* (III. 31) and *Bṛhat-Parāśara* X. p. 281 remark that a valiant soldier who does not seek mercy though surrounded by many enemies and falls fighting attains imperishable worlds and that when he reaches heaven divine damsels run after him to choose him as their Lord (III. 34-35). *Parāśara* III. 36 is a ²⁷⁷verse which is

277. सं वज्रमधिष्ठयता च विनाः स्वर्गविशेषं यच्छेद यान्ति । अर्धम यामयेव हि तत्र
 कीराः पाण्डव सुपुत्रेषु रसिपुङ्गवः ॥ *Parāśara* III. 36; *Kaśikā* X. 3 presents some
 different readings. The second verse in *Kaśikā* is नरं शराभं सतिष्ठत्य पूर्णं सुसज्जितं
 धर्महृत्तोत्तरोपम् । तत्पश्यन्ना धृष्टके च यच्छेद्यो भर्तृपुत्रस्य कृते न पुश्चेत् ॥ It occurs
 also in the *वलिज्ञापीमन्धराय* (IV. 2) attributed to *शार*, where also it appears
 to be a quotation being introduced with the words शुभं ननु भवन्तः । *Parāśara* सुधी-
 कृते सेन्ये चो वृज्राज निवर्तते । अथ द्वाभी हेतुवपामि धृष्टधर्मकचोत्तमः ॥ शिरःपश्यन्ने वज्रमे
 विजान्ति रक्तचिन्द्वजः । सोमपानेन मे सुकृपा इति वसिष्ठजोऽब्रवीत् ॥ उपपन्ते पृथुतो ये च
 धृष्टपथमेकचोत्तमः । इहैस्तेषां हि निर्वातिरेव यान्ति विचित्रपदम् । *पुष्टराशर* X. p. 281. *वसि-*
 ष्ठ means *Parāśara*.

ons of the two quoted by Kauṭ. (X. 3) when soldiers are to be urged on to fight. Kauṭīya (in X. 3) advises that the king himself and his *mantrin* and *purohita* should urge on his soldiers by quoting Vedic and classical Sanskrit passages about the rewards waiting for those who fall fighting for their master and the religious punishments for those who run away. Astrologers should infuse spirit into their side by asserting that the heavenly aspects favour their side. The day before the battle the king should observe a fast, offer oblations into fire to the accompaniment of Atharvaveda *mantras* and cause benedictory texts to be repeated that refer to victory. Bards should recite lays describing heaven as the reward for the brave and hell for the timid and extol the caste, guild, family, deeds and character of the soldiers. The assistants of the *purohita* should declare that they have practised witchcraft against the enemy. The commander-in-chief and the officers under him should address the army as follows:—'a hundred thousand (*panas*) will be the reward for him who kills the enemy king, fifty thousand for him who kills the commander-in-chief or the crown prince, a hundred for slaying the officer of the *patti* (a battalion), twenty for bringing the head (of a common soldier) and twice the pay and the booty seized by each to all soldiers'. Kām. (XIX. 18-21) says that the king should give the rewards (promised as in Kauṭ.) to the soldiers after they succeed in the exploits mentioned. Vide also Mānasollāsa II. 20 verses 1163-1167 (pp. 133-134) for similar promises. Gaut. (X. 20-23) prescribes that whatever wealth is acquired by a soldier by his individual effort should be given to him by the king, but the horse or elephant caught by a soldier goes to the king, that if many soldiers by a joint effort obtain some valuable plunder the king should choose and retain the best for himself and the rest should be divided among the soldiers according to their services in the battle. Vide Manu VII. 96-97 (which allow even a chariot, horse or elephant to be retained as booty by the soldier and everything else including female slaves, except jewels, gold and silver), Kām. XIX. 21-22, Śukra IV. 7. 372.

A treatise will be required to deal with the weapons of war from ancient times. Even in the Rgveda several weapons are mentioned e. g. *ṛṣi* (Rg. V. 52. 6, V. 57. 2 and 6 on the shoulders

278. कर्णं हिम च कुर्वं च यो वज्रपति वर्यतः । दद्याद् वर्यतुल्यं हि द्रुयो
वीर्यवराधिपः ॥ काम. XIX. 21-22 and शुक IV. 7. 372 (read: दद्यात्कर्णान्तर्गते च
... मर्त्यतः).

of the Maruts), arrows (V. 57. 2, VI. 75. 17), quivers (V. 57. 2), the ankusa (of Indra in VIII. 17. 10, X. 44. 9), paraśu (X. 28. 8), krpāna (probably a dagger, in X. 22. 10), vajra made of *ayas* (X. 48. 3, X. 113. 5). Atharvaveda IV. 6. 6. refers to poisoned arrows. In the Atharvaveda²⁷⁹ I 16. 2 and 4 reference is made to lead as destroying sorcerers and it is said 'if you kill our cow or horse or man we shall pierce you with lead so that you will cease to kill our strong men'. In Tai. S. I. 5. 7. 6 it is said²⁸⁰ that when a *samīdh* is offered into fire with the mantra 'indhānās-tvā śatam himāh' the sacrificer discharges against his enemy the śatagahni (weapon killing a hundred) which acts like vajra itself'. Dr. Oppert in his Introduction to the Nītiprakasikā pp. 10-13 relies on these and other passages for holding that the ancient Indians knew fire-arms and that Atharvaveda I 16. 4 refers to *leaden balls* discharged from cylinders. Vide Dr. Oppert's work on the 'weapons, army organisation and political maxims of the ancient Hindus' (1880), where he describes several weapons and holds that gunpowder was known in India long before the 13th century A. D. Mr. G. T. Date's 'Art of war in Ancient India' (London 1929), Dr. P. C. Chakravarti's work (1941, Dacca) and Prof. Dikshitar's book on the same subject may be consulted for details. The numerous weapons mentioned in the Mahābhārata (e. g. Udyoga 155. 3-9) also are passed over here. Vide Hopkins' paper in J. A. O. S. Vol. XIII pp. 269-303 for detailed descriptions. The Allahabad Stone Pillar Inscription of Samudragupta (middle of 4th century A. D.) contains a long list of weapons (C. I. I. III pp. 6-7).^{280a} One important question is whether gunpowder and fire-arms were known to our ancient and medieval works. Śukra refers to gunpowder called *agnicūrma* in II 93, 196, IV. 7. 203, guns (IV. 7. 209-211) and gives the formula of gunpowder in IV. 7. 201 (viz the mixing of five *pālas* of salt-petre, one *pala* of sulphur and one *pala* of coal powder). The Śukranītisāra is comparatively a late work and was probably

279. सीसापापात वज्रः सीसापाः शिखपावलि । सीसं न इन्द्रः प्रापन्नं न द्रुक् पातुचा-
नमम् ॥ यदि नो मां हंसि यच्च यच्च यदि दृक् यच्च । तं त्वा सीसेन विधामो यथा मोक्षो अवरिहा ॥
अथर्ववेद I 16. 2 and 4.

280. एषा वै सुर्मा कर्णकावत्येतया ह स्म वै देवा अहुराजी जतवर्हा ० इत्यस्मि पदेतया
समिधमावृषाति यज्ञमेवैतच्छतर्षी यजमानो हनुष्याय गृह्णाति । तै. सं. I. 5. 7. ५ सायण
explains 'ज्वलन्ती लोहमयी स्थूया सुर्मा । सा च कर्णकावली शिखवती । अन्तरपि ज्वल-
न्तीरपयः । तस्मान्मानेपद्रुक् । ... अमया समिधाय येन जतवर्हिमेनायुचं वज्रं कृत्वा'.

280a. 'यश्च शर-शङ्ख-शक्ति-पात-अ-सि-होम-भिन्दिपात-वाराच-वैतसिकाद्येक-
वधरथ-विस्फाटुलज्जय-तत्तादृशान-समुद्र-पोषणित-मातृतर-वर्मणः' Gupta Inscriptions
pp. 6-7.

written in the 13th or 14th century when cannon came to be used in Europe for the first time. Both in the Rāmāyana and the Mahābhārata the word *śataghni* (killing a hundred people) occurs frequently. In the Yuddhakāṇḍa²⁸¹ 3. 13 it is stated that at the gates of Lāṅkā hundreds of iron śataghnis, looking burnished, sharp and terrible, had been arranged by the demons. In a poetic description of Lāṅkā in the Sundarakāṇḍa chap. 2, it is said that śataghnis and śūlas were like the hair on the head of Lāṅkā (verse 21). In the Vanaparva 15 there is a fine description of Dvāravati (Dvārakā) besieged by Śālva, in which it is said that the capital had numerous towers and turrets, machines, tomaras, ankusās, śataghnis &c. In Ādi. 207. 34, Vanaparva 169. 16, 284. 5, 290. 24, Droṇa 156. 70, Karna 11. 8, Śalya 45. 110 the śataghni is mentioned, but it is impossible to find from these what exactly it was like. From Vanaparva 284. 31 it appears that the śataghnis were discharged with force by the hands and had wheels and round balls or stones in it. In Droṇa 179. 46 it is said that the śataghni employed by Ghatotkaca had wheels and killed four horses at once. In Droṇa 199. 19 śataghnis are said to have two or four wheels. In Vanaparva²⁸² 284. 4 it is said that the powder of *śarjaraśa* (resin from *Sal* tree) had been collected. In the Harivamśa (Bhaviṣya-parva 44. 20), among the weapons hurled at Narasiṃha by Hiraṇyakaśipu were blazing śataghnis (*śataghniḥkṣiṣca diptābhīr-dandairapi sudāruṇaḥ*). In Rāmāyana VII. 32. 44 we are told that at the tip of the weapon called *musala* (club) blazed forth fire like a bunch of *Aśoka* flowers. The Sundarakāṇḍa couples together *śataghni* and *musala* (4. 18). It looks probable that resinous powder was used in some cylindrical contrivances (or rockets) mounted on wheels and capable of throwing stones. But gunpowder appears not to have been used. There is no description of smoke due to śataghnis. Hopkins (J. A. O. S. XIII pp 299-301) holds that gunpowder and fire-arms were unknown to the great Epic and in the present state of our knowledge this view seems to be correct.

The *Nītiprakāśikā* (chapters 2-5) names and describes numerous weapons divided into four classes viz. *mukta* (thrown

281. द्वारेषु संयुक्ता भीमाः कालापसमयाः शिवाः । शतशो रचिता वीरैः शतघ्नो रक्षसां गवैः ॥ युद्धकाण्ड 3. 13 । तपसाकारजयनां विपुलाग्बुधामांश्वराम् । शतशोऽश्वत्थकान्तामङ्गलकर्मसकाम् ॥ नमोऽयं कृतां लङ्कां निमितां विश्वकर्मणा । सुन्दरकाण्ड 2. 21-22.

282. कषाहवन्वयुधेषां ययुः सङ्घोषिताः । शस्त्राणि वपरा घोषाः समर्जरेवर्षाश्च ॥ सुमहात्मनोऽपराधतोमराणि परश्च ॥ अन्विताश्च शतघ्निभिः समपूषितवपराः ॥ वनपर्व 284. 4-5.

or discharged such as arrows), *amukta* (not thrown such as swords), *muktāmukta* (thrown and not thrown, such as *astras* which after discharge can be taken back) and *mantramukta* (*astras* which cannot be taken back). The *Agnipurāṇa* (249-252) and the *Viṣṇudharmottara* (II 178-182) give a summary of the *Dhanurveda* (both agreeing almost word for word, but the latter containing more verses than the former) and speak of five kinds of weapons viz. *yantramukta* (discharged from a machine, a sling, bow &c.), *pāṇimukta* (thrown with the hand such as a stone or *tomara*), *muktāmukta* (like a *prāsa*, *amukta* (sword) and *niyuddha* or *bāhuyuddha* (wrestling). The science of *astras* was of a supernatural kind. In the epics and *purāṇas*, the great heroes are said to have learnt *astravidyā* either from a teacher or from their father or by practising austerities and sometimes (as in the case of Kuṣa and Lava) certain *astras* pass to the son by the mere fact of his birth and the wish of his father. Whether the *Dhanurveda* often referred to in the epics had consigned this science of *astras* to writing and could have enabled a reader to possess the miraculous powers attributed to *astras* is more than a modern can say. The *Agnipurāṇa* (chap. 134-135) contains magical incantations for victory in war and conquest of the worlds. The *Parasurāmapratāpa* (*Rājavallabhakāṇḍa* folios 9-12) contains numerous mantras and yantras and incantations derived from Tantra works like the *Brahmayāmala*.

The *Mahābhārata* is careful to point out that an army constitutes the most inferior kind of *bala* (power). *Udyogaparva* (37. 52-55) states that *bala* is of five kinds viz. brute force (*bāhubala*), that due to the acquisition of ministers (*amātyalābha*), that derived from wealth (*dhanaalābha*), that from noble descent (*abhiyātubala*) and the power of wisdom (*prajñābala*), which last is the best of all. These are quoted by the *Budhabhūṣana* p. 79. In *Śānti* 134. 8 it is said²⁸³ that there is nothing that the strong cannot accomplish and that whatever the strong do is pure. In another place it is said 'everything is wholesome to the powerful' (*Āśramavāsi* 30. 24). In *Ādi* 175. 45 a warrior's power is scorned and the power of the spiritual merit of *brāhmaṇas* is extolled as the real power.

283. यद्बलवानो बलं कुरु तस्यैवावलोक्यते । उद्योग 37. 55 ; नास्त्वस्यार्थं बलवतो सर्वं बलवतो ह्युचि । शान्ति 134. 8 ; सर्वं बलवतो पश्ये सर्वं बलवतो ह्युचि । सर्वं बलवतो धर्मः सर्वं बलवतो स्वयम् । आश्रमवासि 30. 24 ; जिह्वं शविष्यते ब्रह्मैकोनं बलम् । बलवतो विविचिन्त्य त्वं एव परं बलम् । आदि 175. 45-46. These dicta about the strong remind us of the words of Nietzsche in 'Beyond Good and Evil', section 29 'It is the business of the very few to be independent; it is a privilege of the strong' (tr. by H. Zimmer).

CHAPTER IX

SUHRT OR MITRA (ALLY OR FRIEND).

Manu inculcates the necessity of making friends in VII. 208 and cites the qualities of a good friend (for a king) 'a king does not prosper by the acquisition of gold and land so much as by securing a firm friend who would be powerful in future, though he may be of depleted resources at the time. That friend, though a weak one, is commended, who is righteous, grateful, whose subjects (or ministers) are contented, who is attached and who pursues (to the end) work undertaken'. According to Manu VII. 206 land, gold and ally are the three fruits of royal endeavour or policy. Yaj I. 352 is similar to Manu VII. 208. In VII. 9 Kautilya in opposition to the above holds that the acquisition of land is better than that of gold and friend and the acquisition of gold is superior to that of a friend²⁸⁴. The Mahābhārata (Śānti 138.110) states: 'no one is the friend or enemy of any one else; friends or enemies are made by wealth (or objects pursued by a person)'.²⁸⁵ Kām. VIII. 52 says the same. Śūkra. (IV. 1.8-10) opines 'in the case of a brave, energetic, strong and politic king all others, though outwardly friendly, secretly cherish enmity to him and only wait for (the proper) time (to strike). There is no wonder in this. Are they not themselves greedy of conquering territories? A king has no friend and he is the friend of none'. Śānti (80.3) says²⁸⁶ that a friend is of four kinds, one who has the same goal, one who comes for protection or security, one who is naturally so and one who is acquired. Karpaparva 88.28 gives the four kinds somewhat differently viz. natural (*nahaja*), acquired by conciliatory words,

284. संहितप्रमाणे मित्रद्विरूपमुल्लामानामुत्तरोत्तरो दानः श्रेयान् । मित्रद्विरूपे हि सुमिलभाज्यवतः । मित्रद्विरूपलामाघो वा तानाः सिद्धः श्रेयसोरन्त्यतरं साधयति । कौटिल्य VII. 9.

285. न कश्चिदप्यस्मिन्मित्रं न कश्चाप्यस्मिन्नुद्वेष्ट । अर्थास्तु मित्रद्वन्द्वे मित्राणि रिपवस्तथा । शान्ति 138.110; कारणेन हि जायन्ते मित्राणि रिपवस्तथा । कानन्दक VIII. 52, नास्ति जायता रिपुर्नाम मित्रं नाम न विद्यते । सामर्थ्ययोगाज्जायन्ते मित्राणि रिपवस्तथा । विष्णुधर्मोत्तर III. 145. 14=शान्ति 140. 5; न राज्ञो विद्यते मित्रं राजा मित्रं न कस्य वै । शुक्र IV. 1. 9.

286. महाधौ भजमानश्च सहजः कृत्रिमस्तथा । शान्ति 80. 3. भजमान may mean 'पितृरैतामहकमागतः' and सहज friends are one's mother's sister's son and the like.

won by wealth and one drawn by one's prowess. Kām. (IV. 74) says that a *mitra* is of four kinds viz. by birth (such as one's father's father, mother &c.), made by relationship (i. e. marriage), hereditary (one's father's friend), one who is saved from calamities.²⁸⁷ According to Kām. (IV. 75-76) the qualities of a friendly king are purity (of heart), liberality, bravery, sharing happiness and sorrow, affection, vigilance (to carry out one's friend's object), truth; and briefly the characteristic of a true friend is devotion to the objects desired by his friend. The purpose for which a friend is made is to secure one of the three *purusārthas*, *dharma*, *artha* and *kāma* (Kām. IV. 72).

This subject of making friends leads on to the well-known theory of *maṇḍala* i. e. of inter-state relationship. Kauṭ. VI. 2 and VII. Manu VII 154-211, Āśramvāsiparva 6-7, Yaj. I 345-348, Kām. VIII-XI, Agnīpurāṇa 233 and 240, Viṣṇudharmottara II. 145-150, Nītivākyaṃṛta pp. 317-343, Rājantiprakāśa pp. 316-330, Nītimayūkha pp. 44-46 deal with this theory of *maṇḍala* and the six *guṇas* at great length. As the Kautīliya is probably the earliest of these and contains the most elaborate treatment of the subject, a brief outline from it is presented here. The Nītivākyaṃṛta (pp. 311-313) copies the very words of Kautīliya.

The *yogakṣema* (welfare) of a State springs from peace (*sama*) and exertion (*vyāyāma*). The latter achieves the completion of works undertaken, while *sama* brings about the undisturbed enjoyment of the fruits of undertakings. The (proper) employment of the six *guṇas* (*sandhi* &c.) is the source of *sama* and *vyāyāma*. What results (*udaya*) from these six *guṇas* is either deterioration, stagnation or progress. *Udaya* depends upon human and divine causes which together govern the world. The human ones are *naya* and *apanaṇa*. Human causes are seen (anticipated) and can be operated (by men). *Naya* (good policy) is that out of the human causes from which results *yogakṣema* (welfare); *apanaṇa* (impolitic way) is that which produces loss (or an unfavourable state). In VI. 1 (last verse) Kautīliya says that a king who understands *naya* and is endowed with the *ātmaguṇas* and all the elements of the State will conquer the whole world, though originally he may have a small kingdom. The *maṇḍala* theory is set out in relation to a king who

287. औरसं कुतसम्बन्धं तथा वंशकनागतम् । रक्षितं व्यसनेभ्यश्च नितं श्रेष्ठं यदु-
चिष्यम् ॥ काम. IV. 74.

is called *vijigīṣu* (the ambitious ruler or conqueror). Kām. VIII 6 defines²⁸⁸ *vijigīṣu* as a king who aspires to extend his territories, who is possessed of all the seven elements of sovereignty, who has great energy and who makes great efforts. In verses 7-11 he mentions at length his qualities. All our works place before kings this ideal of conquest, domination or self-aggrandizement at the expense of one's weak neighbours. A *vijigīṣu* is a king who is endowed with good qualities (called *ātmasampat* on p. 45 above) and with the several elements of the State and who is the fountain of policy (*naya*), i.e. who has a definite good policy to pursue. An *ari* (actual or potential enemy) is a king or kings who are the immediate neighbours on the circumference of the kingdom of the *vijigīṣu*. From this it follows that *ari* may comprehend one king, two kings or more who are the immediate neighbours of the *vijigīṣu*. But it should be remembered as insisted upon by the *Nītivākyaṃrta*²⁸⁹ (p. 321) that there is no inflexible rule that the immediate neighbour is an enemy and that the king whose dominion is beyond the immediate neighbour will be a friend. Contiguity or distance is not necessarily the cause of friendship or enmity, but rather it is the purpose (or object) that makes friends or enemies. All that is meant is that the immediate neighbour is most likely to be an *ari* (a real or potential enemy). A *mitra* (friend of the *vijigīṣu*) is he who is separated (from the *vijigīṣu*) by the intervention of the kingdom of the *ari*. A *śatru* is a neighbouring ruler possessed of the characteristics of an enemy²⁹⁰ (detailed in Kauṭ. VI. 1). The *yūtaṃya* (to be attacked or invaded by the *vijigīṣu*) is an *ari* who is involved in difficulties. From this it is clear that in the terminology of Kauṭilya *ari* is a generic expression including actual and potential enemies who will generally be on the borders of the kingdom of the *vijigīṣu*. A *śatru* is an *ari* who invites attack or destruction or harassment or reduction. That enemy who is plunged in vices or calamities may be

288. सपञ्चस्तु मङ्गलिर्निर्महोत्साहः कृतञ्जनः । जेतुमेवमशीलश्च विजिगीषुरिति स्मृतः ॥
काम. VIII. 6.

289. अमन्त्रतः शत्रुरेकान्तरं मित्रमिति नैव एकान्तः । कार्यं हि मित्राणामित्राणोः
कारणं न दुर्गतिमर्कसंश्लेषयोः । नीतिवा. (बाहुष्पतः) p. 321.

290. अराजकीजी लुब्धः क्षुद्रपरिचाको विरक्तमङ्गलिरन्यायवृत्तिरनुको व्यसनी निह-
न्साहो दैवदामाणो धत्तिकज्ञानकारी अमतिरललुब्धः ह्रीको निरयापकारी शेषमित्रसंपत् । एवं-
भूतो हि शत्रुः दुष्टः सक्षुण्णो भवति । कौटिल्य VI. 1.

attacked and is then called *yātavya*²⁹¹; one who has no support or has only a weak support is to be extirpated; an enemy who is the opposite of this last (i.e. who has a support or strong support) is to be either harassed or to be reduced. Support (*āśraya*) means a strong fort or a good friend (Kām. VIII. 60). So that a *śatru* is of four sorts (*yātavya*, *ucchedya*, *pīdaniya*, *karsaniya*). Harassment is caused to him who is without *mantra* and a strong army, while one who is strong in *mantra* and army is to be rendered weak in these respects. Both a *śatru* or a *mitra* are of three kinds, *sahaja*, *krtrima* and *prākṛta*. A *sahaja* (natural) friend is one who is related through one's parents (such as maternal or paternal aunt's son); one who is resorted to for wealth or safety is *krtrima* (acquired) i. e. one who has obliged the *vijigīṣu* or has been under his obligations; and the king who is next to the neighbour (i. e. who is separated from the *vijigīṣu* by the intervention of the neighbour king) is *prākṛta* (i. e. because he is a *prakṛti*, an element in the mandala theory). A *sahaja* enemy is one who is born of the same family (such as a step-brother), a *krtrima* is one who is antagonistic or incites antagonists (i. e. one who has caused harm to or who has been harmed by the *vijigīṣu*), while the immediate neighbour is a *prākṛta* enemy. The Mīt. on Yāj. I. 345 very concisely but lucidly explains all these and the four kinds of *śatru*. The Viṣṇudharmottara (II. 145. 15-16) and the Agnipurāṇa (233. 21-22) say that in their opinion the *prākṛta* is really *krtrima*. Kām. VIII. 56 also speaks of only two, *sahaja* and *krtrima*. Although it is possible that the *vijigīṣu*'s realm is surrounded by many kings, the one who is taken for discussion is the enemy and is to be regarded as in front (*purastāt*) of the *vijigīṣu*. Therefore in front of the *vijigīṣu* come in order the *ari* (immediate neighbour), then the *mitra* (whose domain is next after that of the *ari*), then the *arimitra* (the friend of the enemy who will be immediately after the *mitra* of the *vijigīṣu* and so will be the enemy of the *mitra*), then comes the *mitra-mitra* (friend of the friend of the *vijigīṣu*) and then *arimitra-mitra* (ally of the enemy's friend). When the *ari* is said

291. अरिः संप्रयुक्तः सामन्तः शत्रुः । स्वसनी वातव्य अनपात्रयो दुर्बलाभयो बोधेऽद्भीयः । निपर्वणे पीडनीयः कर्शनीयो वा । कौटिल्य VI. 2; अरिः दुनश्चतुर्विधः । वातव्योच्छेत्तव्यपिडनीयकर्शनीयमेवेव । तत्र वातव्योऽनन्तरमुत्पिडति; स्वसनी हीनबलो विरक्तपटुति; विदुर्गो निपर्वणीो दुर्बलबोच्छेत्तव्यः । पीडनीयो मन्त्रबलहीनः । मन्त्रमन्त्रबलशुक्तः कर्शनीयः । निर्मूलनाससुच्छेदे पीडने बलनिग्रहः । कर्शने तु दुनः नाहुः कोशदृष्टापकर्शनात् ॥ इति । मिताक्षरा ०० वा. I. 345. These very words are quoted in the सत्त्वती-चिन्तास p. 36.

to be in front of the vijigīsu, the ruler of the territory in the opposite direction is said to be in the rear of the vijigīsu (*pārcū*) and is called *pārśvagrāha*²⁹² (lit. one who may seize or attack the heels). He is really an enemy but this special term is applied to him and he causes trouble in the realm of the vijigīsu when the latter has started on an invasion or is about to start on one. The king who is the ruler of the country beyond the pārśvagrāha is called *ākraṇḍa* (lit. one for whose help a cry is or may be raised by the vijigīsu). He would ordinarily be a friend being separated from the vijigīsu by the realm of the pārśvagrāha. The friend of the pārśvagrāha (who would be immediately next after the ākraṇḍa) is called *pārśvagrāhāsāra* and the friend of the ākraṇḍa who would be beyond the pārśvagrāhāsāra is called *ākraṇḍāsāra*. A *madhyama*²⁹³ king is one whose realm is close to (is on the border of) that of the vijigīsu and that of the *ari* (the immediate enemy in front) and who is capable of helping (or favouring) both of them whether both are combined in alliance or not and who is capable of resisting either of them individually when the two are not in combination. An *udāsina* king is generally defined as one whose territory is beyond or outside of the sphere of the realms of the vijigīsu, his enemy in front and the madhyama, who is very strong on account of his elements of sovereignty, is capable of helping the above three kings whether they be in combination or not and who is capable of resisting any of the three when they are not in combination. Kullūka on Manu, VII. 153 differs from this explanation i.e. the udāsina is a powerful king whose realm may be situated in front or in the rear or even at a distance from that of the vijigīsu, but he is indifferent for some reason or other to the activities of the vijigīsu. The Mit. on Yāj. I. 345 observes that the udāsina also is of three kinds and the *prākṛta* udāsina is the overlord of the State that is separated from the central state (vijigīsu) by two intervening States; the

292. वो विजिगीषी पश्चिमेति पश्चिमान्ते वा पश्चात्कोपे जन्मयति स पार्श्वग्राहः । पार्श्वग्राहाद्यः पश्चिमः स आक्रन्दः पार्श्वग्राहनिवृत्तासार आक्रन्दमित्रं च । नीति-
साधनाम्न p. 319.

293. अरिविजिगीषोर्युष्मन्तरः संवत्संहतपोरुग्रहसमर्थो निग्रहे चासंहतपो-
र्वध्वजः । अरिविजिगीषुमध्यानां वलिः पशुतिन्धो बलवत्तरः संवत्संहतानारिविजिगीषु-
मध्यानामनुग्रहे समर्थो निग्रहे चासंहतानामनुदास्तमिः । कौटिल्य VI. 2. p. 261: vide
अग्नि 240. 3-5 and विष्णुधर्मोत्तर II, 145. 11-12 for almost the same words in
verse. मण्डतादृषहिरतेवासुदामिनो बलाधिकः । अनुग्रहे संवत्सर्वा व्यस्तानां च पणे वदुः ॥
अग्निपुराण 240. 4-5. This is quoted by the सरम्भवितास p. 39 without
naming the source.

madhyama (or *madhyastha* acc. to Nītivākyaṃṛta p. 318) is the immediate neighbour of both the vijigīsu and his enemy, but wants to remain neutral in the conflict of the two for some reason. It will have been noticed that the vijigīsu, the enemy, the madhyama and the udāsīna are independent categories, while four out of the remaining eight others viz. mitra, mitramitra, akranda, akrandāsāra can be grouped under vijigīsu, while the other four viz. arimitra, arimitramitra, pārṣṇigrāha and pārṣṇigrāhāsāra may be grouped under arī. It is therefore that Manu (VII. 155-156) speaks of the four prakṛtis (vijigīsu, śatru, madhyama and udāsīna) as the *mūla* (basis) of the mandala theory and Kām. VIII. 20 informs us that Maya declared that a mandala was constituted by these four. Kām. VIII. 86 gives it as his own opinion that mandala is constituted by *mitra*, *udāsīna* and *ripu* (enemy) only²⁹⁴. Kautilya says that the mandala is constituted as explained above by twelve prakṛtis. Uśanas was of the same opinion (Kām. VIII. 22) and Kām. (VIII. 41) states that there were numerous views about the number of the elements of the mandala, but a mandala of twelve kings is quite clear and well-known among all people²⁹⁵. Kām. (VIII. 20-41) explains how by various combinations of the elements of the mandala with some elements of sovereignty (viz. ministers, rāstra, durga, kośa, bala) different writers held that the mandala comprised 18, 26, 54, 72, 108 and other numbers of prakṛtis. The *Sarasvatīvilāsa* (pp. 37-41) shows how from different standpoints Uśanas himself argued that the mandala was constituted by one prakṛti, two, three, 10, 21, 108 and that other writers speak also of 4, 5, 6, 14, 18, 30, 36, 44, 60, 72 prakṛtis. All these figures are due to the inveterate habit of scholastic minds to run an idea to the earth and to indulge in divisions and sub-divisions. Even Manu (VII. 157) states that combining each of the twelve members of mandala with the five elements of sovereignty from amātya onwards we get 60 which with the twelve²⁹⁶ come to 72. It is to this that the

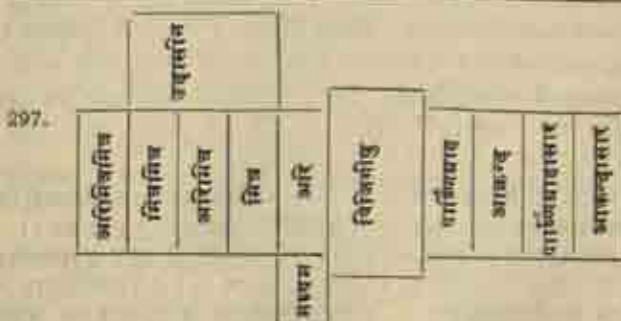
294. Vide the *Viśākhara* on वा 1. 343 'पाणिप्रदाक्रन्दसराद्वस्परिमित्रोद्दारीनेष्वेवाभ्यर्तव्यं संज्ञानेवमात्रे ग्रन्थान्तरे दक्षितमिति योगीश्वरेण न वृथमुक्ताः ।'

295. इतिप्रकारं बहुधा मण्डलं परिचक्षते । सर्वलोकात्मनीं तु स्मरुं द्वादशराजकम् ॥ काम. VIII. 41. This is quoted as a verse of Uśanas in the *Sarvasva-vilāsa* p. 41.

296. एवं चतुर्मण्डलमङ्गलेषु । द्वादश राजमण्डलतः षड्विंशमण्डलतः सङ्ख्येयेन द्विसप्ततिः । तामां यथास्वं सम्पदः शक्तिः सिद्धिश्च । षट् शक्तिः सुखं सिद्धिः । शक्तिस्त्रिविधा । कौटिल्य VI. 2. p. 261: मण्डलस्था च या चिन्ता राजन् द्वादशराजिका । द्विसप्ततिमतिश्चैव योक्ता वा च स्वयम्भुवा ॥ शान्ति 59. 70-71. नीलकण्ठ connects this half with medicine, while some read द्विसप्ततिविधा चैव शरीरस्य यतिक्रिया.

Daśakumāracarita (VIII. p. 144) refers when speaking of the tree of *naya* that it has 72 *prakṛtis* as its leaves (*dvīsaptatiprakṛtipatraḥ ... nayavanaspatibḥ*). The central idea of the map-*ḍala* was to keep a balance of power among a circle of States, some being friendly among themselves owing to their position and surroundings, while others would form an antagonistic group. Kauṭ. (VI. 2) also refers to this number 72, out of which twelve are constituted by kings (*rājaprakṛtis*) and 60 (five sovereignty elements of each of the twelve) are styled (*dravyaprakṛtis*). The Śāntiparva (59. 70-71) also refers to a mandala of 12 kings and to the number 72. Vide N. N. Law's 'Studies in Ancient Hindu Polity' pp. 195-208 for elucidation of the theory of mandala. The theory of mandala has this element of truth in it that on a calculation of probabilities the kings who are the immediate neighbours of a ruler are likely to be his enemies (at least potential) and the kings that are beyond the immediate neighbours may make common cause with the central State taken for discourse in order to crush between them a hostile intermediate State. It suggests that diplomacy may take the lines indicated by position and probabilities. The diagram below will²⁹⁷ illustrate the idea. Manu (VII. 177 and 180) declares that (state) policy consists briefly in this that a king must so arrange all things or means that the ally, the *udāsīna* and the *śatru* cannot harm him or become superior to him. Medhātithi (on Manu VII. 177) remarks that even an ally may become an enemy if his interest so requires (*svārthapativisṭūcca mitramapyaribhavarati*).

Kautilya²⁹⁸ relates the theory of mandala to the theory of *śāldis* (already referred to on p. 171) and the six-fold policy (*śāḍguṇya*).



298. विजिगीषुः शत्रुवपेक्षः बाहुसुपपन्नपद्विज्ञातः । को. VII. 3 ; बाहुसुपपन्नः बहुति-
मण्डलं योतिः । सन्धिविग्रहास्तन्वानसंभयद्वैधीनायाः बाहुसुपपन्निरवाचायाः । को. VII. 1 ;
मण्डलानि सन्नाचक्ष्व विजिगीषोर्यथाविधि । धान्वात्म्यं त्वयै कार्यं सन्धिविग्रहचिन्तनम् ॥
विष्णुधर्मोत्तर II. 145. 6.

Everything secures success (i.e. his and his kingdom's happiness) according as the king is able to put forth each of the śaktis to their utmost. The aspiring king taking into account his three śaktis may employ the six gunas (methods of policy). The circle of the twelve States gives rise to the employment of the six methods. Differing from Vāṭavyādhi (who said that there were only two methods, sandhi and vighraha) and for once agreeing with the ācāryas, Kauṭilya accepts the position that there are six gunas and briefly defines them. The *Sarasvativilāsa* (p. 42) quotes a sūtra of Gautama about the six gunas, which is not found in the printed text.²⁹⁹ Kauṭilya defines the six as follows: *Sandhi*³⁰⁰ means making an arrangement or agreement; *vighraha* means taking up a hostile attitude; *āsana* means an attitude of indifference; *yōna* means preparing (for attacking one's enemy); *samhaya* means taking shelter (with another powerful king); *dvaiddhibhāva* means making peace with one king and adopting a hostile attitude to another. He then states that a king who is less strong than his neighbour may make an agreement with him, one who is rising in power may take up a hostile attitude, whoever thinks 'the hostile king cannot hurt me nor can I hurt him' may remain indifferent (or neutral) in his own State, one who is endowed with all advantages may march against the enemy, whoever is devoid of strength should seek the protection (of a powerful ruler), and one should resort to a two-fold attitude when one's object can be accomplished by a friend. Some other works give more exact definitions and also define *dvaiddhibhāva* somewhat differently, viz. *dvaiddhibhāva* is dividing one's army into two parts. Vide *Viṣṇudharmottara*³⁰¹ II. 150. 3-5 and *Mit. on Yāj.* I. 346. Some say that *samhaya* means seeking the protection of the udāsina or madhyama king. Kauṭilya (book VII) gives the most elaborate treatment of these six gunas and so do

299. तथा च यैः तन्मयम् । अतुल्यपानवदन्त्य सन्निविष्टपानासनैर्द्वीपाभ्य-
समाश्रयाकपान्मुक्तान् परिकल्पयेत् । इति । सरस्वतीविलास p. 42.

300. पञ्चगन्धः सन्धिः, अपकारो विघ्नः, उपेक्षणमासनम्, अम्युक्त्वयो पानम्, परा-
यणं संशयः, सन्निविष्टलोपादानं द्वैधीभावः इति षट्पुण्याः । परस्माद्वीपमानः सन्दधीत ।
अम्युक्तीवमानो विघ्नहीपात् । न मां परो गार्ह परमुपहन्तुं शक्त इति पानम् । गुणाविशेषमुक्तो
पाचात् । शक्तिहीनः संशयेत । सहायसाधने कार्ये द्वैधीभावं गच्छेत् । इति गुणावस्थापनम् ।
कौटिल्य VII. 1. Vide *Raghuvamśa* 8. 21 where Kālidāsa follows this 'पञ्च-
गन्धमुक्तान्मुक्तान्जः षट्पुण्यपुङ्क्त समीक्ष्य तावत्तम् ।'

301. पञ्चगन्धः सन्धिः, अपकारस्तु विघ्नः । त्रिगीर्षोः शत्रुविषये पानं यावा विधी-
यते । विघ्नहेति स्वके देवे विधितिरासनमुच्यते । यत्प्रायेण पपायं तु द्वैधीभावं तदुच्यते । वृद्धासीनं
मध्यमे वा संशयपारसंशयः स्तुतः । विष्णुधर्मोत्तर II. 150. 3-5; द्वैधीभावः स्वबलपर द्विधा-
करणम् । निता. on Ya I. 346.

Manu VII 160 ff, Kām. IX-XVI, Viṣṇudharmottara II 145-150, Agnipurāṇa 240, Mānasollāsa pp. 94-116, Rājantīprakāśa pp. 324-413. Only a few remarks are all that considerations of space allow. Manu (VII 162-168) states that each of the *gunas* is of two sorts. Kām. IX. 2-18 and Agni 240 enumerate sixteen kinds of *sandhis* and Kām. defines them. His treatment is based on Kauṭ. VII 3. Kauṭ. (VII 3) says that when a weak king is attacked by a powerful king who is the leader in a circle of States, the former should at once submit and sue for peace on condition of offering his army, treasury, himself and his territory. Then he says that *sandhis* made on condition of offering the army are of three kinds viz. *ātmanūya* (lit. offering himself as the prey, which involves the condition that the king himself with a fixed number of troops or with the flower of his army would present himself when called), *ātmarakṣaṇa* (saving himself, where the condition is that the commander-in-chief or the crown prince would present himself with an army), *adṛṣṭa-purusa* (lit. in which no person is definitely prescribed, where the agreement is that some one on the king's behalf or the king himself should march with the army to some place as required by the invader). These *sandhis* are called *daṇḍopanata* (lit. in which submission is made with the army). *Sandhis* made on condition of offering the treasury (*koṭiopanata*) are *parikraṇa* (lit. price, where by offering the treasury the other elements of *vājya* are kept free), *apagraha* (where as much money is offered as can be carried on a man's shoulder), *kapāli* (lit. broken half of a pot, where an immense amount of money has to be paid). *Sandhis* called *detopanata* (submission with offer of territory) are *ūdiṣṭa* (where a part of the realm is ceded and the rest saved from the invader), *ucchanna* (where all the realm except the capital which has been deprived of all its wealth is offered), *apakraṇa* where by offering the produce of the land the kingdom is freed, *paribhūṣaṇa* where the agreement is to pay more than the produce of the land. Kām. adds some varieties and remarks (IX. 21-22) that *upahāra* (offering a present) is the only *sandhi* (of which all the rest are varieties) in his opinion, that only the *mutra sandhi* (alliance of friendship without the offer of land, money or anything else) does not come under *upahāra*.³⁰² Kām. IX. 20 and Mānasollāsa (II 11.

302. एक उपोपहारस्तु सन्धिरेतन्मूलं हि नः । उपहारस्य भेदास्तु सर्वेभ्यः सेवयजिताः ।
अभिधीक्य भली परमावृत्तव्या न निवर्तिते । उपहारान्ते तस्मात् सन्धिरभ्यो न विद्यते ॥
कामन्दक IX. 21-22.

pp. 94-95) speak of four sandhis, *mitra-parasparopakāra* (agreement to help each other), *sambandhaja* (by offer of a princess in marriage) and *ujahāra*. An interesting example of a sandhi is furnished by the Lekhapañcāsika which gives a form of treaty dated Monday, Full Moon of Vaiśākha in *śamāt* 1288 (1232 A.D.) between Yādava king Singhana of Devagiri who is styled *mahārājādhirāja* and Lāvāṇyaprasāda (Lavanaprasāda) a Vāghela king who is styled *rūnaka* and *mahāmāṇḍal-śrīma*, whereby the high contracting parties agreed not to invade each other's possessions, to combine and oppose anyone else who invaded one of them. Vide Bom. G. Vol. I part 1 p. 200 based on Bhandarkar's Report on the search for Mss. 1882-83 pp. 38-40. Kām. IX. 23-26 and Agnipurāṇa 240. 10-13 mention twenty kinds of persons with whom *sandhi* should not be made, Kām. (IX. 27-41.) states the reasons why it should be so and in IX. 42-52 seven persons are enumerated with whom he recommends *sandhi* and gives reasons. A king should make sandhi even with one equal in strength (not only with one who is more powerful), since victory in battle is doubtful (Kām. IX. 59).³⁰³ Kaut. uses a striking simile when he says that if one king comes in conflict with an equal they both will be destroyed in the same way as two unbaked earthen pots striking against one another. If a more powerful king rejects the proposal of a weaker king for sandhi, the latter should take up the attitude of offering his army or follow the course prescribed in book XII (*ā-baliyasam*). In VII. 12 when dealing with agreements between kings, about undertakings to build forts or irrigational works or forests &c. Kaut. makes very interesting remarks about land routes being superior to water routes and about the route to the Deccan and the south being more profitable than the one leading to the Himalayas.³⁰⁴ Kām. X. 15 (= Agni 240. 19) says that *vira* (hostile attitude) is of five kinds viz. that of step-brothers, that due to land (seizure of or encroachment on lands or houses), due to woman (carrying away one's wife or loving the same woman), due to words (cutting speech) and due to wrongs. Kām. X. 2-5

303. मन्त्रिमित्रोत्तमनापि मन्त्रिणो विजयो दुषि । न हि संशयितं कुर्वादिह्वाच
इत्युच्यते ॥ काम. IX. 59.

304. स्थलपथे हि मरतो दुश्शिलापथाच्छ्रेयान् । इत्यपथमग्न्यद्विनाशिनस्तदुत्तर-
पथाः सार्वभरता इत्युच्यते । नेति कीदृशः । जम्बुद्वीपजिनोऽप्युत्तर-
पथाः सुवर्णपथाश्च प्रवृत्तता दुश्शिलापथे । कीदृशः VII. 12.

(= Agni. 240. 20-24) enlarges upon the 16 ways in which *vigraha* (hostility) springs, such as seizing the kingdom, wife, districts, vehicles (horses, elephants) and wealth of another, pride, harassment of subjects &c. When a king feels that his own army is well-nourished and pleased, that his subjects are prosperous and contented and that the army and subjects of another are the opposite of this, then he may adopt a hostile attitude and when he feels sure that he will secure one of the three fruits of hostility (viz. land, ally and wealth—Kām. X. 26-28). Kauṭ. VII 15 deals with the attitude and conduct of a conquered king who has offered to the conqueror his army (*dandopanāyī*), while VII 16 speaks of the conduct of the *dandopanāyī* (an aspiring king who wants to make by means of his army another king submit to him). *Yāna* means marching for invasion on the part of a *vijigīṣu* whose army and prowess are of the highest and whose subjects are contented on account of his good qualities (Kām. XI 1). The Matsya 240. 2 and the Agnipurāṇa (228. 1-2) add that when the enemy in the rear is overwhelmed by an *ākramā*, then the *vijigīṣu* should start on an invasion or when the enemy is plunged in calamities. But before actually invading the enemy who is *yātavya* (chosen for attack) an ambassador (*dūta*) should be sent (Kām. XII 1) to see whether the enemy will submit without fighting. That is, there was to be no war without negotiations and an ultimatum. In the Mahābhārata (Udyoga 83. 5-7) it is said that Kṛṣṇa started as an envoy from the Pāṇḍavas to the Kauravas at the end of *śarad* (autumn) on the Revatī nakṣatra in the month of Kārtika (verse 7, *Kaumude māsi revatīyām śaradante himāgume*). In the Purāṇas and the medieval digests elaborate rules are laid down about the religious and propitiatory ceremonies before starting on an invasion. The Viṣṇudharmottara II 176 and Agnipurāṇa 236. 1-18 require that for seven days before starting on an invasion the king is to engage in the worship of and make offerings to various gods, first to Gaṇapati, then to all the guardians of the quarters, the planets, Aśvins, Viṣṇu and Śiva and the images in the temples of his capital. Then he is to note what good and bad dreams he sees on those days in his sleep and judge accordingly. Vide Matsya 242, Agnipurāṇa 229 for dreams portending good and evil. This prognostication of good fortune from dreams is very ancient. The Chāndogya Up. (V. 2. 8-9) quotes a verse to the effect that when a man is engaged in the performance of solemn sacrifices for securing some object and sees a woman in a dream he should feel that his rite will be

crowned with reward. Similarly the *Alt.*³⁰⁵ *Ār.* III. 2. 4 mentions the signs of approaching death, one of which is to see in a dream a dark person with black teeth. Both these passages are quoted by Śāṅkara in his *bhāṣya* on *Vedāntasūtra* II. 1. 14. The *Viṣṇudharmottara* II. 132-144 (based on *Garga*), II. 164, *Matsya* 228-241, *Agni* 230-232 are concerned with the portents and omens in the heavens, in the sky and on the earth and rites (*śānti*) meant to avert the evil prognostications from them. The *Manasollāsa* II. 13 pp. 97-112 and *Rājanītiprakāśa* pp. 331-351 also deal with these and other astrological matters, which are passed over here, though some of them are very interesting e. g. *Viṣṇudharmottara* II. 135. 1 refers to the weeping and dancing of images. On the 6th day from the time the rites begin which is the day previous to the starting of the invasion the king undergoes a ceremonial bath for victory called *jayā-bhizaka*. This is described at great length in the *Rājanītiprakāśa* pp. 351-395 quoting extensive passages from the *Līngapurāṇa*. The ceremony of *Jayābhisaka* resembles the coronation ceremony in many respects. The *Matsyapurāṇa* 243. 15-16 and the *Viṣṇudharmottara* II. 163. 18-31 contain the same long list (with very slight variations) of articles, persons and animals the sight of which is auspicious when the king starts on an invasion and *Matsya* (243. 2-14) contains another long list of inauspicious sights. A few of the auspicious ones are white flowers, jars full of water, cows, horses, elephants, fire in flames, a courtesan, *dūrva* grass, gold, silver, copper, all gems, sword, umbrella, banner, corpse not accompanied by crying persons, fruits, the *śaśvika* sign. Among the inauspicious things and sights are dark grains, cotton, dried cowdung, fuel, jaggery, tonsured or naked man or man with dishevelled hair or wearing reddish robes, a lunatic, a *cāṇḍāla*, a pregnant woman, broken pot, chaff, ashes, bones. The *Manasollāsa* II. 13 verses 811-823 (pp. 102-103), *Nītimayūkha* pp. 58-59 also give long lists of inauspicious and auspicious sights or events. *Matsya* 243. 27 and *Viṣṇudharmottara* II. 163. 32 are both careful to add that all evil signs are counterbalanced by the confident (or joyous) frame of the mind, which is the highest sign of victory.³⁰⁶ *Gaut.*

305. स यदि द्विषं पश्येत्सुखं कर्मेति विद्यात् । तदेव श्लोकः । पदा कर्मसु काम्येषु द्विषं स्वयेषु पश्यति । स दुर्दि तत्र जानीयात्स्मिन्मम निद्वर्त्तने । छान्दोग्य V. 2. 8-9; न चित्तानि जीवेत्पत्नीति विद्यात्... अब स्वयः । इदं कृत्यं कृत्यद्वयं पश्यति स एतं हन्ति । ऐत. आर. III. 2. 4.

306. मनसस्तुष्टिरेवाय परमं जयलक्षणम् । एकतः सर्पतिष्ठानि मनसस्तुष्टिरकतः ॥ मत्स्य 243. 27 = विष्णुधर्मोत्तर II. 163. 32.

(XI. 15-17) prescribes that the king should heed the advice of astrologers and of those who are adepts in averting the effects of portents and perform the rites indicated by them such as grahasānti, rites on auspicious days and of *śaṣṭyāgama*, rites of black magic against his enemy &c. Kaut. IX. 7 (at the end) says that the removal of divine calamities is brought about by the worship of deities and by honour to brāhmanas and by performing rites prescribed in the Atharvaveda. Manu VII. 82 and Yāj. I. 315 state that gifts made to learned brāhmanas are an inexhaustible treasure for the king. The Rājadharmakāṇḍa (p. 109) quotes the Brahmapurāṇa requiring the king to perform two Lakṣahomas every year and also a Kotīhoma. The Rājadharmakāṇḍa (p. 113) and Rājantīprakāśa (p. 144) quote Udyogaparva 33. 93-95 which set out eight indications of a man's approaching fall viz. hating brāhmanas, opposing brāhmanas, depriving them of their wealth, desire to kill or harm them, taking pleasure in calumniating them, not liking their praise, not remembering them in religious acts and getting angry when they make requests.

It may be useful and interesting to see how in very ancient times the king was made ready for battle. The Āśv. Gr. S. (III. 12) says: when a battle is impending (the purohita) should make the king put on his armour (in the following way). The purohita should stand to the west of the chariot (of the king) muttering the hymn (Rg. X. 173) 'I have brought thee &c.'. He should hand over to the king his armour with Rg. VI. 75. 1 'when the man with armour advances it is like the appearance of the cloud &c.'. He hands over the bow with the next verse (Rg. VI. 75. 2 'dhanvāna ga'). The purohita should make the king recite the next verse (Rg. VI. 75. 3) and should himself mutter the 4th verse (Rg. VI. 75. 4). He should hand over the quiver to the king with the 5th verse (Rg. VI. 75. 5). When the chariot turns in the direction intended the purohita should mutter the sixth verse (Rg. VI. 75. 6). He should recite over the horses the 7th (Rg. VI. 75. 7). He makes the king recite the 8th (Rg. VI. 75. 8) when the latter looks at the arrows and makes the king recite Rg. VI. 75. 14 ('he envelopes his arm' &c.) when the latter fastens to his arm the leather (that protects his arm against the bow-string). When the king is being taken forward in the chariot by the charioteer the purohita ascends the chariot near the king and makes him recite the hymn called Abhivarta (Rg. X. 174) and the two verses (Rg. VIII. 101. 3-4). Then the priest looks at the king with

the Apratiratha hymn (Rg. X. 103 'āsūp āsāno'), the Sāsa hymn (Rg. X. 152 'āsā itthā') and the Sauparna hymn 'pra dhārayantu madhuno ghrtasya'.³⁰⁷ Then the king should traverse in order all directions in his chariot. He should stand in that direction in which the Sun (by day) or Venus (by night) shines and give fight from that direction. The king should pass his hand over the drum with the three verses (Rg. VI. 47. 29-31 'fill with breath (or roar) the heaven and the earth'). The king should discharge arrows with Rg. VI. 75. 16 and the purohita should mutter Rg. VI. 75. 17 ('where the arrows fall together &c.) when soldiers are fighting, or the purohita may direct or teach (the king to recite from the above such verses as are appropriate to his actions).³⁰⁸ In the Harṣacarita (7th Uchhvāsa first paragraph) Bāna favours us with a realistic and graphic description of the preparations made when Harṣa marched out from his palace on his *digvijaya*. The astrologers found out an auspicious day and *lagna* (sign of zodiac

307. This hymn is found in no *śrahitā*. Śāyana in his comment on At. Br. 29. 9 (where the sauparna hymn is mentioned) gives an alternative explanation saying that the sauparna hymn referred to is the one declared in the gṛhyasūtra viz. 'pra dhārā yanto &c. ', i. e. he does not read 'pradhārayantu' as in the printed At. Br. on At. Br. 37. 7 (where the Abhivarta, Sāsa, Apratiratha and Sauparna hymns are mentioned) the comment of Śāyana as printed reads 'pradhārayantu'.

308. संज्ञाने मनुष्येदे राजानं संग्रहयेत् । आ त्वा हार्यमन्तरेधीति पश्चाद्वधस्वावस्थाव । जीमूतस्येव भवति प्रतीकमिति क्वचंच प्रयच्छेत् । उत्तरपा पशुः । उत्तरा वाचयेत् । स्वये चतुर्षा जपेत् । वस्त्रमेषुभिं प्रयच्छेत् । अभिगर्भमाने वडीम् । सतम्भाभ्याम् । अष्टमी-मिदमवेक्षमाणं वाचयति । अहिरिव भोगैः पपेति बाहुमिति तलं नष्टमानम् । अघ्नैः सारव-मानमुपाकृष्टानीवर्तं वाचयति य यो वा मित्रावरुणेति च द्वे । अघ्नैर्मन्त्रैश्चितापतिरवग्रस्त-सौपर्णैः । य धारयन्तु मनुषो धृतरपेति सौपर्णम् । सर्वा विभोऽक्षपरिपाषात् । आदित्यमौग्रस्मं वाकस्वाव यथावयेत् । उपश्वासपृथिवीमृतं यामिति तुचेन दुग्धुभिर्ममिषुयेत् । अवहृष्टा परापतेतीधुनिसर्जयेत् । यश्च बाणाः संपतन्तीति पुष्पमानेषु जपेत् । संज्ञिष्वाह्वा । आश्व. सू. III. 12. With आदित्यमौग्रस्मं वा compare शान्तिपर्व 100. 20 'वसो वायुर्धतः सूर्यो यतः शुक्रस्ततो जपः । पूर्वं पूर्वं स्वाव परां संनिपाते युधिष्ठिरः' . This shows that the king desiring victory should not face the Sun or Venus (औग्रस्म) but should have them behind him and that he should not have the wind blowing in his face but blowing behind him. काटिह्रास in the कुमारसंभव III. 43 'इतिपयत् परिहृत्य तस्य कामः दुरः शुक्रमिव यथावे' refers to this, on which मञ्जुनाथ quotes a verse 'यतिशुक्रं यतिपुत्रं प्रपद्वारकमेव च । अपि शक्रसमो राजा हतसंघो निपतिः ॥' The युक्तिकल्पतरु (ed. by N. N. Law) p. 17b says 'अस्तस्य देवलमतेऽपाने दृष्टोऽर्जुनः' (verse 79). Oldenberg's translation (in S. B. E. vol. 29 p. 234) 'he should commence the battle in the line of battle (invented by Ādiya or Diama)' is wrong, as will be seen from the above quotations. Hopkins in J. A. O. S. XIII. p. 193n simply follows Oldenberg's translation holding Ādiya and Astanasa to be vyūthas.

rising on the eastern horizon) indicative of his conquest of all the four quarters, Harsa was bathed in water poured from silver and golden jars, performed worship of Śiva, offered oblations into fire that sent up flames turning from left to right, made gifts of jars full of sesame grains and of cows whose hoofs and horns were tipped with gold, sat on a throne on which tiger-skin was spread &c.

When starting on an invasion the king was required to perform a rite called *nirājanavidhi* which consisted in waving lights before horses, elephants, banners, armies &c.³⁰⁹ In II 30 Kātilya³¹⁰ prescribes that on the 9th day of Āsvina lights should be waved before horses and at the beginning and close of invasions and in times of diseases. In II 32 Kātilya speaks of the waving of lights before elephants thrice in the *cāturmāsya* (from about July to October) and at the time when two seasons meet. Kālidāsa in the *Raghuvamśa* 4.25 refers³¹¹ to the performance of this ceremony when Rāghu started on his *digvijaya* and states (in 17-13) that *dūrvā* grass, barley sprouts and the bark of the *palāśa* tree were required in the *Nirājanavidhi*. Kām. IV. 66 speaks of waving lights before horses and elephants (*nirājita-hayadvipah*). The *Bṛhatsamhitā*, chap. 44 (verses 16-28) deals with the ceremony of waving lamps before horses, elephants and man. This ceremony had to be performed every year in the month of Āsvina from the first to the 9th day of the bright half or on the 8th, 12th, or 15th of the bright half of Kārtika (acc. to the *Bṛhatsamhitā* 44.2) by those who owned horses and also elephants. It is also described in the *Śaunskīya* II 8, *Agnipurāṇa* 268, *Viṣṇudharmottara* II 159 (quoted at length in the *Rājanīti-prakāśa* pp. 434-438), *Kālikapurāṇa* 88-15 ff. *Nirṇayasindhu* II p. 169, *Yuktikalpataru* p. 178. The *Bṛhatsamhitā* describes it as follows:—In the north-east of the capital an ornamental arch of some holy tree was to be erected 10 cubits wide and 16 high. Round the necks of horses threads smeared

309. राज्ञा पाशाविधिं कश्यपे जिगीषुषी परावनीम् । नीराजनाविधिं कृत्वा सैनिकांश्चाभ्येक्षत । यजामन्मयाम्मृगान्मयानिति पाशाकनो मतः ॥ युक्तिकल्पतरु p. 178

310. नीराजनाविधायपुत्रे कारयेच्छत्रमेऽहनि । पाशादावधत्तान् वा म्यापौ वा श्रान्तिके रतः ॥ अर्थशास्त्र II. 30 last verse; तिष्ठो नीराजनाः कार्यान्वातुनोऽप्यर्तुसन्धिषु । अर्थशास्त्र II. 32, last verse but one. जगदल explains नीराजन as नीरेण जलेन अजने स्वर्गमेव (on बृहत्संहिता 43.1). It is possible to derive the word from निह् + राजन (from राज्).

311. तस्मै सम्पश्यतो बह्विर्वाजिनीराजनाविधौ । मदक्षिणाक्षिर्पाजेन हस्तेनेव जवं वदौ ॥ रघु 4. 25,

with saffron paste and marking nut, with rice grains and white mustard and *kushta* plants tied on them were to be suspended. For seven days mantras addressed to the Sun, Varuna, Viśve-Devas, Prajāpati, Indra and Viśnu were to be recited over the horses, during those days the horses were not to be harshly addressed nor struck with a whip and auspicious words were to be addressed to them, conches were to be blown, drums beaten and singing indulged in before them. On the 8th day, to the south of the arch a shed with its face to the north and covered with *kūśa* grass and barks was to be erected and in front of it on a *vedi* fire was to be lighted and various materials and plants such as sandal-wood were to be collected and thrown into jars full of water, various foods were to be offered as *balli*, fuel sticks of *khadira* and other holy trees were to be brought. The king seated on a tiger-skin and facing the east should sit near the fire together with an astrologer and horse doctor and should follow at the direction of the purohita the procedure laid down for *Grahayajña* (sacrifice to planets) and the raising of Indra's banner. A horse and an elephant possessing the most auspicious signs should be bathed and honoured with new white cloth, sandal-wood paste, garlands and incense and should be brought to the foot of the arch near the shed with sweet words to the accompaniment of music and conch-blowing. The movements of the horse and elephant should be watched and prognostications made therefrom about victory &c. A ball of food over which mantras have been recited should be offered to the horse and if the latter smells it or eats it that is a sign of coming victory. Dipping an *udumbara* twig in the jars filled with water and plants the purohita should touch therewith the horse, the elephant, the king and his soldiers to the accompaniment of mantras. Then making an effigy of the enemy the purohita should pierce it with a sharp and pointed stave in the region of the heart with incantations from the *Atharvaveda* and break it. The purohita should pronounce over the bridle *vedic* mantras and insert it in the mouth of the horse, which the king should ride and proceed in the north-east together with his army, with drums beaten, conches blown and banners displayed. This is a propitiatory rite (*sānti*) as said by *Varāhamihira* (*Bṛhat-samhitā* 44.2) and the *Agnipurāṇa* 26.8 and 31 and must have been in vogue centuries before *Kauṭilya* flourished.

The duty of the conqueror, after vanquishing his opponent, to place on the throne of the late king his son or a kinsman and to respect the customs and usages of the territory conquered has

already been set forth above (p. 71). Conquests resulted in either loss of territory or more generally in the offering of tribute of various kinds to the conqueror viz. wealth (gold and silver), horses, elephants, pearls and gems, fine cloth &c. Particularly horses from Kāmbōja, Bālīhika, Gāndhāra and other countries in the north and west were highly prized. Vide Sabha 51. 10, 53. 5, Udyoga 86. 6, Droṇa 156. 47, Sautika 13. 2; and Sabha 27. 27, 28. 6 for horses as tribute. In Sabha 30, 28-30 all the above kinds of tribute are said to have been levied from the Mleccha kings by Bhīma³¹²

Kauṭilya devotes one book (VIII) to the discussion of *vyasana*. *Vyasana*³¹³ means 'what deprives a man of great good' (from the root 'as' to throw with 'vi'). According to Kaut. *vyasana* may be either the absence of qualities (such as noble birth) or the opposite of such qualities, faults (such as hot temper), excessive attachment (to women &c.), harassment (by invasion or calamities like famines). So *vyasanas* may broadly be divided into two classes viz. calamities and faults due to *kāma* (passion) and *krodha* (hot temper). The view of many *ācāryas* is that of the *vyasanas* of the king, ministers, the people of the realm, fort, treasury, army and ally, the *vyasanas* of each preceding one are more serious than those of each succeeding one. From the discussion in VIII. 1 it appears that Kauṭilya in this case agrees with the *ācāryas*. Differing from Bhārdvāja Kaut. holds that the calamities befalling a king or his vices are more serious in their consequences than those of the ministers, since it is the king who appoints the ministers, the purohita, other servants and superintendents of departments and he can employ others in their places and since the rise or fall of the people depends upon him. Disagreeing with Viśiākṣa Kauṭilya holds that the *vyasanas* of ministers have more serious consequences than those of the people, as all (national) undertakings proceed from the ministers, as the security of person and property from internal and external enemies, adoption of remedies to resist calamities, recruiting of army, collection of taxes are all in their hands. Differing from the school of

312. स मर्षां नोच्छ्रयपतीन् सागराक्षवासिनः । करमाहारपाप्मानं राजानि विविधानि च ॥ नन्दनामुद्रकाणि मणिमौक्तिकजम्बुदम् । काञ्चनं राजतं चैव विद्रुमं च महोदधम् ॥ ते कोटिरत्नसंलघेन कौन्तेर्न मदता तदा । अम्बुधर्मन्महाभारतं धनक्षयेन पाण्डवम् ॥ मत्ता 30. 28-30.

313. सुखपातिलोप्यमन्त्राः पदोप्यसङ्गः पीडा वा व्यसनं । परपापेन ज्ञेयस इति व्यसनम् । कौटिल्य VIII. 1. Vide Kām. XIII. 19 and नीलिव. p. 177 for a similar derivation. व्यसनाचार्यवादिनं पृथक् ज्ञेयस इति व्यसनम् । नीलिव.

Parāśara, Kautilya is of opinion that the vyasana of the people has graver consequences than that of the fort (or capital), for forts, treasury and army, all irrigation and agricultural work, stability, bravery and abundance (of things) spring from the people. Against Piśuna, Kautilya states that the calamities befalling the fort (or capital) give rise to graver consequences than those of the army for the reason that it is in the fort that the treasury and army are kept safe. Kaut. (VIII 2) holds that internal troubles are more serious than external ones and troubles due to ministers are the most serious of all internal troubles. Kaut. prefers an ignorant ruler (who has not studied śāstras) to a king who is bent on swerving from the dictates of śāstras which he knows; he prefers a king suffering from illness to a new king (a conqueror), a weak but a high-born king to a strong but low-born one. In VIII 3 he enumerates the several faults and vices which have already been stated above. (p. 54). After remarking that ignorance and lack of training are the causes of vices or faults, Kaut. discourses on the relative seriousness of the several faults or vices and holds that gambling is worse than hunting, that sexual passion is worse than gambling, that drinking is worse than sexual vice and that gambling is the special cause of dissension among *saṅghas* (corporate assemblies) and among families of nobles that have the characteristics of *saṅghas*. In VIII 4 he states that among divine visitations like fire, flood, epidemics and famine, floods are more devastating than fire, diseases and epidemics are less destructive than famine, that the loss of outstanding³¹⁴ men is more serious than that of common men even in large numbers, since there can hardly be one eminent man among a thousand ordinary or inferior men. He holds that the trouble caused by the Crown Prince is a lesser evil than that caused by a favourite queen. In VIII 5 Kautilya holds a discussion on the troubles arising from the army and allies. He first enumerates thirty-three matters that may cause trouble with the army, such as not giving due respect to it, or showing contempt to it, not dispensing the pay at the proper time, not preventing diseases from attacking it, having soldiers who are very fond of their wives. He then takes pairs of troubles out of these and states which is the lesser evil of the two. Then he deals with causes that lead to the loss or defection of allies.

314. मेति कौटिल्यः—शक्यः सुदृढस्यः यतिसन्धोर्ध्वं बाहुल्यत् । सुदृढकारणात् सुदृढस्यः । सहस्रेषु हि सुदृढो मन्त्रयोको न वा सत्त्वयज्ञाधिक्यात्पत्न्यात् सुदृढकारणमिति ।
को. VIII. 4.

In the *Rājadharmakāṇḍa*, the *Rājanītiprakāśa* and other works the king is advised to celebrate several rites and festivals, which may be briefly referred to here. They were meant as propitiatory rites to avert national calamities and also to keep the populace in good humour and to afford enjoyment to people. The *Rājadharmakāṇḍa* (pp. 115-117) and the *Rājanītiprakāśa* (pp. 416-419) quote about 35 verses from the *Brahmapurāṇa* to the effect that the king is to celebrate in one or more of the six months from Vaisākha festivals (*devayātrā*) in honour of various deities such as Brahmā, the gods, the Ganges, Vināyaka, Nāgas, Skanda, the *Ādītyas*, Indra and Rudra, the *Mātṛs* (Durgā and others), the Earth, *Viśvakarman*, Viṣṇu, Kāmadeva, Śiva, the Moon respectively on the *tithis* from the 1st to the 15th. The same two works quote a passage of 18 verses from the *Skandapurāṇa* about the festival of moonlight and also the rite of raising the banner of Indra and the latter quotes (pp. 425-433) a long passage from the *Viṣṇudharmottarapurāṇa* also. Vide H. of Dh. vol. II pp. 825-26 for description of the festival of Indra's banner. They describe the worship of Devī on the 8th and 9th days of *Āśvina* (from the *Devipurāṇa*) when animals were sacrificed, the gifts of cows on the *Amāvāsyā* of *Kārtika*, the rite called *Vasordhārā* (stream of wealth). The details of all these are passed over here for want of space.

CHAPTER X

PURPOSE OF THE STUDY OF RAJADHARMA AND THE ENDS OF THE STATE

In the preceding pages an attempt has been made to present a picture of the theory and practice of Government and statecraft as delineated by ancient and medieval Indian writers on *dharmaśāstra* and *arthaśāstra*. One feature that would strike any reader is the religious colouring with which all theories and ideals are suffused. Another is that the ideal set before rulers and their officers is a highly moral one. Several faults have been found in the theory and practice inculcated by the writers. Except for some centuries before and after the Christian era, monarchy has been the only form of government known in India and monarchy alone is generally envisaged by Indian writers. The result has been that the king came in practice to be almost synonymous with government and the State, though a very lofty sense of his duties and responsibilities was impressed on the king. Another defect lies in the almost total absence of discussion on the form and working of oligarchical or republican States. Besides, once the main outlines of the theory of the State were established by the first writers on polity, for about two thousand years succeeding generations of authors were content to follow in the old grooves and hardly ever made any fresh approach to the problems of government or started any rival conceptions or theories. Ancient authors were content to induce the kings and the people to support as far as possible the *status quo*. They thus provided for a more or less static society and did not encourage any dynamic thoughts or movements. There was no strong or assertive middle class nor was there any organized Church. Though the *brāhmanas* were a sacred class, they were not organized as a body and had to depend only on exhortations and texts to exert influence on the monarchs. It may no doubt be pointed out that similar conditions prevailed almost all the world over. Small States, constant wars and invasions were the commonest phenomena in Europe till the 15th or 16th century and no reproach should be levelled at the Indian writers alone. It cannot, however, be gainsaid that even after experiencing the constant plundering expeditions and religious persecutions of Scythian, Hun and Moslem invaders from the

1st to the 11th and the following centuries the able thinkers, warriors and statesmen of India did not enlarge their limited horizon and find means to consolidate and weld together into a united block the numerous small States that were scattered all over India. They could have put forward a common idea and ideal before all the provinces and peoples of India viz. meeting the onslaught of plundering and fanatical invaders, which, if properly handled, would have acted as a unifying force. It was to some extent only in Vijayanagara and Mahrāṣṭra that in medieval times means were adopted to weaken the power of the invader, to present a solid front and establish powerful Hindu kingdoms. The old writers spun the same old webs of theories that had been there for centuries, they did not formulate new theories nor did they take steps to infuse into the common people a sense of solidarity and unity as Indians and did not inculcate deep and abiding sentiments of patriotism similar to those we find in Western countries for the last two or three hundred years. In spite of such drawbacks it will have to be conceded that ancient Indian writers made substantial and independent contributions to the theory and practice of Government and that their handiwork can stand comparison with the ancient and medieval thought of most countries of the world.

It may be asked: What in these days is the use of the study of the theory and practice of Government in ancient India? It may be argued that the world is now hoping, as promised by the great leaders of the United Nations, to enjoy several freedoms, that great expectations are created in the minds of millions of down-trodden peoples, and that all peoples including Indians will be faced in the near future with democracy and great problems of reconstruction and that knowledge of the past cannot throw much light on the pressing needs of the present or the serious questions that will confront all in the latter half of the 20th century. It may be conceded that the situation in which we find ourselves now and in which we shall be placed in the near future is unique and much light cannot be thrown by a study of the past on the solution of the problems that will have to be tackled by us. But that study has certain useful purposes to serve. Millions of people in India as well as in the world are hardly better than hewers of wood and drawers of water in their own countries. They intensely desire to be masters in their own countries and of their own destinies. The iron has entered

deep in their souls that for countries as well as individuals freedom of action spells happiness and dependence on the will of others is misery (as Manu laconically puts in IV. 160), that men who have no independence are hardly human beings (as the Mārkaṇḍeya 125-29 says).³¹⁵ The study of the past will give us hope and convey the assurance that we have in the past conducted governments and administrations of vast empires, that we evolved theories and practices which were not inferior to those of some of the most advanced nations of the world, that, allowed opportunities and scope, we may rise equal to what the circumstances may demand of us. On the other hand, such a study will stimulate thought, focus our attention on our mistakes and shortcomings, make us be careful to avoid pitfalls and give us indications of the directions in which we must make a new orientation in our ideals and practices.

At the end of this section on Rājadharmā, a question may be asked: what were the ends or purposes that the State in ancient India placed before itself or the dharmaśāstra and arthaśāstra writers said the State should place before itself? The end of the State has been differently stated by different philosophers and theorists of the West from ancient times to the present day. To take only a few examples. To Plato and Aristotle³¹⁶ the end of the State was good life for the citizens. But it is not very easy to say what is meant by the good life. Bluntschli in 'Theory of the State' (Oxford, 1885.) Book V Chap. IV p. 300 formulates the proper and direct end of the State to be 'the development of the national capacities, the perfection of the national life and finally its completion', provided, of course, that the process of moral and political development shall not be opposed to the destiny of humanity. This definition is not easy to grasp. There is no agreement as to what is the destiny of humanity and the concepts of nation and national life are hardly older than a few centuries even in Europe. For 'nation' one may substitute the word 'country'

315. सर्वे पश्यन्ति दुःखं सर्वमात्मनः सुखम् । एतद्विद्यासमासेन लक्षणं सुखदुःखयोः ॥ मनु. IV. 160; स्वतन्त्रता मनुष्याणां परतन्त्रा सदापला । नरोणि परतन्त्रो नस्तस्य कीदृ-
ङ्मनुष्यता ॥ मार्कण्डेयपुराण 125, 29.

316. Aristotle in 'Politics' says 'A state exists for the sake of a good life and not for the sake of life only ... Political society exists for the sake of noble actions and not of mere companionship' (Book III. Chap. 9).

or 'kingdom'. Then it may be of some application to India. It is impossible to define the end of the State in a single word or in a few words. This question about the end of the State has been partly answered already when speaking of the ideals of kingship. At the risk of some repetition a reply to the above question may be given in the following words. The authors on Dharmasūtra had a very low estimate of human nature, they believed that ordinarily men were depraved, that it was difficult to find a man pure by nature and that men were kept in the straight path by the fear of punishment (Manu VII. 22 = Śānti^{316a} 15. 34), Yaj. I. 361 requires the king to punish and bring to the proper path castes and guilds when they swerve from their dharma, Kām. (II. 40 and 42-43) says the same thing and adds that in the absence of danda the world will revert to the state of mātsya-nyāya (the strong devouring the weak), Śukra I. 23 says the same thing. The ancient writers did not rely on the natural moral impulses of man and on his will to do the right thing. The same ideas are expressed by some Western writers on law and politics. 'A herd of wolves is quieter and more at one than so many men, unless they all had one reason in them or have one power over them' says Jeremy Taylor. Salmond (Jurisprudence p. 65) states 'man is by nature a fighting animal and force is the *ultima ratio* not of kings alone but of all mankind'. We must distinguish between immediate or proximate ends and the ultimate end. The ultimate end or goal of most of our philosophy was mokṣa (release or liberation from the ever-recurring cycle of births and deaths and from the miseries and suffering of life). The same was the ultimate goal of rājadharmā. But the proximate goal of the State in India was to create such conditions and

316a. सर्वो दुष्कृतो लोको दुर्लभो हि शुचिर्नरः । दुष्कृत्य हि नपाद्वीतो भोग्यैश्च मयते ॥ ज्ञानि 15. 34; इदं ब्रह्मणा विषयैर्मातृवत् परस्परं क्षीयन्तोलुपे जगत् । समाने वर्त्मनि साधुमेविते पतिते दुष्कृत्योपपत्तिवत् ॥ काम. II. 42; राजदुष्कृत्योपपत्तिवत्, स्वस्वधर्मपरा भवेत् । शुक I. 23. This conception bears striking resemblance to the words of Machiavelli in 'Discourses' I. 3 quoted by H. Butterfield in 'Statecraft of Machiavelli' (1940) p. 111 'Those who have discussed the problems of civic life demonstrate—and history is full of examples to confirm the fact—that whoever organizes a state and arranges laws for the government of it must presuppose that all men are wicked and that they will not fail to show their natural depravity whenever they have a clear opportunity, though possibly it may be concealed for a while'.

environments as would enable all men to live in peace and happiness, to pursue their avocations, to follow their own customs and usages and their 'svadharma', to enjoy without interference the fruits of their labour and the property acquired by them. The king was the divinely provided instrument to create the conditions of peace, order and happiness. If the king impartially exercises the power of *danda* over all, whether his own son or enemy, in proportion to their guilt, he secures this world and the next for himself and the people; the king's scrupulous performance of his own duties leads him and his people to heaven. The task of the State (or the king who represented the State) was to repress by the threat and use of force any violation of the rights of personal freedom and property, to enforce the practice of people's own traditional customs and usages and to take serious care of virtues and dharma. These were the sentiments of Kautilya himself (III. 1).³¹⁶ At the very threshold of his work he remarks 'therefore the king should not allow people to swerve from or fail in their duties (dharma); for whoever holds fast by his dharma, observes the rules laid down for *āryas* and those of castes and *āśramas* (the stages of life) will be happy in this world and the next. The members of society consisting of four castes and having four *āśramas* when guarded by the king with *danda* will abide by their respective paths, being devoted adherents of their respective duties and avocations'.

Both Kam. I. 13 and Śukra I. 67 state³¹⁷ that a king following the path of righteousness confers upon himself and his subjects the group of three viz. the three *puruṣārthas* of dharma, artha and kama; if he acts otherwise he certainly ruins (himself and the people). The same doctrine is inculcated by other works, such as Śānti 85. 2, Mārkaṇḍeya 27. 29-30.³¹⁸

316b. राज्ञः स्वधर्मः स्वर्गोऽयं धर्मेण रक्षितः । ... दुष्टो हि केषलो लोकं परं चेवं च रक्षति ॥ राज्ञा युजे च शत्रौ च यथादीर्घं क्षमं धृतः ॥ कौटिल्य III. 1; तस्मात्स्वधर्मे भूतानां राजानां न स्पृहियारयेत् । स्वधर्मे सन्ध्यामानो हि मेघं चेदं च नन्दन्ति ॥ स्वयस्थितार्थ-मर्षाद्वा कुतश्चर्माभ्यसिद्धिः । यत्परा हि रक्षितो लोकः मसीदति न सीदति ॥ कौटिल्य I. 3, last two verses; चतुर्वर्णाभ्यो लोको राज्ञा दुष्टेण पाठितः । स्वधर्मकर्माभिरतो वरते स्वेष्टं वर्मसु ॥ कौटिल्य I. 4, last verse.

317. व्याघ्रमहलो वृषतिराजमानमपि च यज्ञाः । विषमं योपसम्पत्ते निहन्ति ध्रुवमन्धरा ॥ काम. I. 13 and शुक्र I. 67.

318. वर्णधर्मा न सीदन्ति यस्य राज्ये सदाश्रमाः । वस्त तस्य सुखं मेव परमेष्ठं च ज्ञान्यतम् ॥ मार्कण्डेयपुराण 27. 29.

Therefore what the king was to do was to see that the dharmas of *varṇa* and *āśrama* were observed by the people and if they swerved from them to bring them back by punishment. Sukra IV. 4. 39 says that each caste was to observe the rules of the caste handed down from generation to generation and that if its members behaved otherwise they were liable to be punished by the king. The principal works emphasize that each individual in the State should fulfil his own duties (*svadharma*) as belonging to a particular class (*varṇa*) or a particular stage of life (*āśrama*) or his own duties due to the position he occupies and those known as *sāmānya dharma* such as *śhīṇasā*, truthfulness &c. (for which see H. of Dh. vol. II. pp. 10-11) and that the purpose of the State was to enable him to do so and to prevent others from interfering with him. All this laid undue emphasis on the preservation of the *status quo*, on current beliefs and practices as the ideal. The writers do not emphasize that each individual must actively pursue the good of the society as a whole. As the final goal was *mokṣa*, undue emphasis was laid on other-worldliness, on individual attainment and on detachment and running away from ordinary worldly affairs. The goal of the State was deemed to be to enable men to attain the four *puruṣārthas*, particularly the first three (as the last viz. *mokṣa* depended only upon individual philosophical insight and mystical experience and was attainable only by a microscopic number). Even the Bārhaspatya-sūtra³¹⁹ (II. 43) says that the fruit of polity was the attainment of *dharma*, *artha* and *kāma*. Somadeva begins his *Nītivākyaṃṛta* in a characteristic way when he performs obeisance to *rājya* (the State) that yields the three fruits of *dharma*, *artha* and *kāma*.³²⁰ Kām.³²¹ IV. 77 winds up his discussion of the seven elements of *rājya* with the declaration that the entire State depends for its highest stability on wealth and the army and that the State when handled by a sagacious minister results in securing the three goals. Kaṭilya³²² (in I. 7) first advises people not to eschew pleasures altogether,

319. नीतिः कलं धर्माधिक्यामायातिः । धर्मेणार्थकामौ परिहृयौ । धार्हस्यसुख II. 43-44.

320. अथ धर्माधिक्यानफलाय राज्याय नमः । नीतिवाक्यामुक्त I. 7.

321. इति स्म राज्यं सकलं समीरितं दरा प्रतिहारय धनं ससाधनम् । दृष्टीनेतश्चि-
तुणेन मन्त्रिणा विषयमिच्छतिमुपैति शास्त्रदीम् ॥ काम. IV. 77.

322. धर्माधिक्यविरोधेन कामं सेवेत । न निःशुक्तः स्यात् । तमे वा विषयमिच्छेत्तदनुबन्धम् ।
एको ह्यत्वासेवितो धर्माधिक्यामायामानामित्यसौ च पीडयति । अथ क्व प्रयान इति कौटिल्या,
अथैतदौ हि धर्मकामायाति । कौटिल्य I. 7.

but to enjoy pleasures in such a way as not to conflict with the requirements of dharma and artha, and adds that a man may enjoy in an equal degree the three goals of life that are dependent on each other, since any one of the three if pursued to excess harms not only the other two but also itself. The Dharmaśāstra authors held that Dharma was the supreme power in the State and was above the king, who was only the instrument to realize the goal of dharma. To these authors the State was not an end in itself but only a means to an end. Kautilya, true to his position as a writer on arthashastra, finally states his opinion that *artha* is the chief among the three goals, as the other two depend upon wealth for their realization. With this statement of Kautilya, one of the most renowned figures of Indian antiquity, this section on rājadharmā may be appropriately brought to a close.

VYAVAHĀRA

(LAW AND ADMINISTRATION OF JUSTICE)

CHAPTER XI

That to administer justice impartially and to punish the guilty were among the prime functions of the sovereign has been stated above (p. 57). The king was deemed to be the fountain (i.e. the distributor) of justice. Kautilya³²³ (I. 19) prescribes that the king was to look into the disputes of citizens and country people in the 2nd part of the day (divided into eight parts). Manu (VIII. 1-3) states that the king desirous of looking into the disputes of people should enter the *sabhā* (the hall of justice) accompanied by brāhmanas, ministers and should there decide every day the causes of litigants. Śukra IV. 5-45 is the same as Manu VIII. 1, Vas. 16-2, Śaṅkha-Likhita, Yāj. I. 327 and II. 1, Viṣṇu Dh. S. III. 72, Nār. (I. 2), Śukra IV. 5-5, Mānasollāsa II. 20, verse 1243 state that the administration of justice was the personal concern of the king. The Mit. on Yāj. II. 1 says that protecting the subjects is the highest duty of a king and that that duty cannot be discharged without eradicating and punishing the wicked, which latter requires that the king should administer justice (vyavahāradarśana). Medhātithi on Manu VIII. 1 also says that protection consists in the removal of troubles, secular and spiritual (adṛṣṭa). Manu VIII. 12 and 14 (= Nār. III. 8-9 p. 42) personifies the administration of justice as Dharma incarnate by representing that when justice is administered the dart of adharma or falsehood by which dharma is pierced is taken out from the body of Dharma. Yāj. (I. 359-360) declares that the impartial administration of justice yields the same rewards as solemn vedic sacrifices do. In this way administration of justice was held to be a very sacred duty. Manu VIII. 128 (= Vṛddha-Hārta VII. 194) declares that a king who punishes those that do not deserve to be punished and who does not punish those that deserve punishment incurs great obloquy and goes to hell. Vas. (19.40-43) prescribes one day's fast for the king and three days' fast for the *purohita* when the king lets off those that deserve punishment and three days' fast for the king and the *kṛcchra* penance for the *purohita* when the king

323. द्वितीये पौत्रजायपदानां कार्याणि यद्वदेत् । कौ. I. 19.

punishes the innocent. The Mahābhārata³²⁴ (Anuśāsana 6-38 and chap. 70) and Rāmāyaṇa say that if a king intent on pleasures does not show himself to litigants who approach him for decision, he would suffer like king Nṛga. The Śukranītisāra (IV. 5-8) also says the same thing. In the Rāmāyaṇa (VII 53-54) king Nṛga is said to have been cursed to become a chameleon for a long period by two brāhmaṇas who had a dispute about the ownership of a cow and could not see the king for many days. Megasthenes (Frag. XXVII. pp. 70-71) says 'the king remains the whole day in court without allowing the business to be interrupted.' Kaut.³²⁵ (I 19) gives the advice that, when in court, the king should not cause petitioners or litigants to wait long at the door, for when a king makes himself inaccessible, those who are near him create confusion about what should or should not be done, whereby the king engenders disaffection among his subjects and makes himself a prey to his foes. The king's court³²⁶ of justice was called *dharmasthāna* (Sankha-Likhita), *dharmāsana* (Nārada I 34, Manu VIII. 23, Śukra IV. 5-46) or *dharmādhikaraṇa* (Kātyāyana and Śukra IV. 5-44) 'The place where the decision of the truth of the plaint (lit. the cause or root of dispute) is carried on by a consideration of the rules of the sacred law is called the *dharmādhikaraṇa* (the Hall of Justice)'—says Kātyāyana. Kālidāsa (Śakuntala V) and Bhavabhūti (Uttararāmacarita I.) employ the word *dharmāsana*.

The authors of *smṛtis* believed that there was a golden age or era of perfect virtue in the dim past, when men were bent only on right conduct, that later ages saw the advent of sinful

324. अधिनामुपसज्जानां पस्तु गोपेति दर्शनम् । सुखे वसन्तो वृषतिः स तप्येत द्युमो वधा ॥ महाभारत quoted by वृण्डविवेक p. 13; अधिनां कार्पाणिदुष्पर्य परमात्मे नैपि दर्शनम् ॥ अथवाः सर्वभूतानां कुकलायो भविष्यति । ... कार्पाणिनां विमर्शो हि राज्ञां दोषाय कल्पते । रामायण, उत्तरकाण्ड 53. 18, 19, 25; पौरकार्पाणि यो राजा न करोति सुखे स्थितः । एवञ्च स मरजे घोरे पश्यते नात्र संशयः ॥ शुक IV. 5. 8; vide उत्तरकाण्ड 53. 6 for very similar words; शङ्खलिकितौ । राजा स्वाधीनमहिरात्मप्रवपकोः स्वयं कृत्वा लुदर्शी विमस्मिन्नुत्तरि भद्राणि पश्यति । राजनीतिः. p. 134.

325. उपस्थानगतः कार्पाणिनामद्वारासङ्गं कारयेत् । दुर्दर्शो हि राजा कार्पाकार्पा-विपर्ययमासजेः कार्यते । तेन मनुष्यकोपमरिचो वा गण्डेत । अर्धशास्त्र I. 19.

326. धर्मस्थाने यावत् दिशि कृत्वा न्युद्धौ समवेतं स्यात् । शङ्ख q. in स्तुतिच. (II. p. 19); धर्मशास्त्रविचारेण मूलसारविवेचनम् । पञ्चाधिक्रियते स्वाने धर्माधिकरणं हि तत् ॥ कार्पा = q. in स्तुतिच. (II, p. 19), परा. मा. III. 1 p. 22. The sq. m. p. 8 reads धर्मशास्त्रालुसारेण अर्धशास्त्रविवेचनम्. The verse as thus read is the same as Śukra IV. 5. 44. Vide स. चि. p. 63 'यत्र स्थाने आवेदितपदस्वनिष्कर्षः धर्मशास्त्र-विचारेण निर्जेतुमिः क्रियते इति धर्मस्थानम् । अत्रैव धर्माधिकरणमिति नामान्तरम् ।'

promptings, that therefore regulation of life by the learned and the king came into vogue (compare Gaut. VIII. 1). Manu I. 81-82 (= Śāntiparva 231. 23-24) state that in the Kṛta age dharma prevailed in its perfection, there was no advent of adharma among men then and that in each of the three succeeding *yugas* dharma declined progressively by the introduction of theft, falsehood and deceit. The Śāntiparva (59. 13 ff) narrates that in the Kṛta age there was no king and no punishment, that gradually *kāma* (lust) and *rāga* (passion) began to wield away and dharma dwindled away. This belief in an ideal or perfect past was universal and was probably depicted in order to induce men to rise higher and higher in goodness and virtue and to make them submit easily to the discipline of government and the priestly requirements. This ideal description of the past is often found associated with the picture of anarchy that reigned in the dim past which was retrieved from horrors by the creation of the kingly office (vide pp. 30-34 above). These diametrically opposite views of the past contained in the same works (such as Manu and the Mahābhārata) probably owe their origin to the desire of the writers to make the common people submit to the absolute rule of kings. Almost all works even from the Rgveda (X. 10. 10) downwards believe in the progressive deterioration of religion and morals. A state of anarchy is visualised in a few works only for the purpose of glorifying the great usefulness of the institution of kingship. Nār. I. 1 states³²⁷ 'when people were solely bent on dharma and were truthful, there existed neither administration of law and justice nor hatred nor jealousy. When dharma declined (or disappeared) among men, administration of law and justice came to be introduced and the king was declared to be the decider of disputes and the chastiser (of the guilty)'. Br. also (S. B. E. 33 p. 277) says 'In bygone ages men were pre-eminently virtuous and free from cruel tendencies; now that men are overwhelmed by greed and hatred, judicial procedure has to be declared'.

The idea of Dharma took the place of the very ancient conception of *ṛta*. In the Rgveda *ṛta* denotes the supreme

327. धर्मकालाः कृत्वा यदास्तत्सत्यवादिनः । तदा न व्यवहारोऽयं द्वेषो नापि मत्सरः । नष्टे धर्मे मनुष्याणां व्यवहारः पतते । यदा च व्यवहारानां राजा वृण्वधः स्यात् । नारद I. 1-2; धर्ममथानाः कृत्वा यदा पूर्वनामधर्मिकानः । ततोऽप्येवमिच्छन्तः व्यवहारः प्रकीर्तितः । बृह. q. by स्मृत्युच. II p. 1, स्व.प. p. 4. Compare Plato in 'Laws' (Book IV p. 432 of the Random House edition) 'There is a tradition of the happy life of mankind in days when all things were spontaneous and abundant'.

transcendental law or the cosmic order by which the universe and even the gods are governed and which is intimately connected with sacrifice. Vide Rg. I. 68. 2, I. 105. 12, I. 136. 2, I. 142. 7, I. 164. 11, II. 28. 4, IV. 23. 8-10 (in which the word *ṛta* occurs ten times), X. 190. 1. On the relation of *ṛta* and law Berolzheimer in his 'The world's legal philosophies' (translated by Jastrow, New York, 1929) says: "closely connected with the religious and philosophical views of the Aryans are certain fundamental positions in regard to the philosophy of law which in turn became the antecedents of later legal and ethical developments among the Greeks and Romans. Foremost among these philosophical conceptions is '*ṛita*', which is at once the organized principle of the universe and the divine ordering of earthly life; as the former it regulates the appearance of the sun and the moon, of day and night and embodies the unchangeable principle that pervades the succession of phenomena; as the latter it is affiliated with purpose and human benefit and is exemplified in the flow of the rivers which fertilize the fields; in the cattle useful to men; in the institutions of marriage, of the monarchical state, of the patriarchal home; and in man's sense of responsibility for his sins. The derivative conceptions of '*vrata*', '*dharma*', '*dhāma*', '*svadhā*' represent special aspects of '*ṛita*'; thus '*vrata*' refers to any specialized embodied '*ṛita*'; while '*dharma*' refers specifically to the moral function of rewarding good and punishing evil" (pp. 37-38). Vide Prof. V. M. Apte's paper on '*Rta*' in the Rgveda (pp. 55-60 of the Silver Jubilee Volume of the Annals of the B. O. R. Institute) in which he tries to prove that *ṛta* means primarily 'the belt of the Zodiac'.

The word *vyavahāra* is used in several senses in the *sūtras* and *smṛtis*. One meaning of *vyavahāra* is 'transaction or dealing' as in Udyogaparva 37. 30 quoted above (on p. 207) or in Āp. Dh. S. II. 7-16-17, I. 6-20. 11 and 16. It also means 'a dispute, a law-suit' in Śānti 69-28, Manu VIII. 1., Vaa. 16-1, Yaj. II. 1., Viṣṇu Dh. S. III. 72, Nār. I. 1 and 2, Śukra IV. 5-5. A third sense is 'legal capacity to enter into transactions' (as in Gaut. X. 48,

Vas. 16-8, Sankha-Likhita (*rakṣed rūjā bālānām dhanānyaprāpta-vyavahārānām* &c. quoted in V. R. p. 599). A fourth but a rare sense is 'the means of deciding a matter' (as in Gaut. XI. 19 'tasya vyavahāro vedo dharmaśāstrānyangāni &c.). In this chapter the word vyavahāra is taken to mean 'law-suit or dispute in a court' and 'legal procedure'. This sense is very ancient. In the Delhi-Topra Pillar Edict No. 1 of Aśoka (Corpus I.I. vol. I p. 123) we have the word 'viyohālasamatā' (vyavahārasamatā) and the word 'vyavahāravidhi' occurs in Kharavela's Hathigumpha Inscription (E. I. vol. XX p. 79). A 'vohārika-mahāmatta' (vyāvahārika-mahāmātra, minister of justice) occurs in the Mahāvagga, I. 40. 3 and Chullavagga VI. 4-9). In the medieval digests, both law and procedure are sometimes dealt with in one book as in the Vyavahāra-nirṇaya of Varadarāja and the Vyavahāra-mayūkha; sometimes the titles of law are treated of in one work and judicial procedure in another. For example, Candēśvara composed the Vivādaratnākara (on titles of law) and Vyavahāraratnākara (on judicial procedure). The word vyavahāra is restricted in some works to judicial procedure alone (as in the Vyavahāramātrkā of Jimūtavāhana and the Vyavahāratattva of Raghunandana). The word *viśāda* which means 'dispute' is often used as a synonym for vyavahāra in the sense of law-suit or legal procedure or both. In Āp. Dh. 8. II. 11-29-5 and in Nār. I. 5 *viśāda* means 'law-suit'. In the Vivādacandra of Misarumīśra and the Vivādatāṇḍava of Kamalākara both law and judicial procedure are treated of. YsJ. (II. 8 and 305) appears to distinguish between *viśāda* (law-suit) and *vyavahāra* (judicial procedure).

The word 'vyavahāra' is defined by several smṛtis and commentators. Kātyāyana gives two definitions, one based on etymology and referring principally to procedure and the other giving the conventional sense having in view a dispute. "The (*upasarjā*) is employed in the sense of 'various', 'anu' in the sense of 'doubt', 'hāra' means 'removing'; *vyavahāra* is so called because of its removing various doubts" (quoted by V. M.

p. 283, Par. M. III. p. 7 and Kullūka on Manu VIII. 1).^{32a} This definition places the administration of justice on a high plane. The purpose of all branches of Indian philosophy is the quest of Truth or Reality. The purpose of legal procedure is, according to Kāt., the same viz. to find out the truth when there is a dispute. But there are some points of difference. The philosopher may take his own time in his search for truth; but justice has to be done as quickly as possible. Further, legal procedure has its own method and limitations in finding out the truth, that is, it depends on oral and documentary evidence, while a philosopher's quest of truth may be purely intellectual and subjective. Another definition is: 'When the ramifications of right conduct, that are together called dharma and that can be established with efforts (of various kinds such as truthful speech &c.), have been violated, the dispute (in a court between parties) which springs from what is sought to be proved (such as a debt), is said to be *vyavahāra*'. Hārta gives an easier definition: 'that is declared to be *vyavahāra* where the attainment of one's wealth (taken away by another) and the avoidance of the dharmas of others (such as those of heretics) are secured with (the help of) the means of proof' (quoted by the Sm. C. II. p. 1). The Mī. (on Yāj. II. 1) defines *vyavahāra* as 'avermment (about a matter) as related to oneself in opposition to another'. Śukra IV. 5. 4 gives another definition. The *Vyavahāramayūkha* gives a much

327 a. वि नानार्थेऽय सन्वेहे इत्यं वा उच्यते । नानासन्वेदहरणाद् व्यवहार इति स्मृतः ॥ कात्या. quoted in अ. मा. p. 283, कुल्लूक on मनु VIII. 1, दीपलक्षिता p. 36, which says 'अज्ञादानादिनानाविधाव्यवहारविषयः निराक्रियतेऽनेनेति नानासंज्ञपहारी विचारः व्यवहारः' ; अथस्तसाध्ये विच्छिन्ने धर्माक्षये न्यायविस्तरे । साध्यमूलस्तु यो वादो व्यवहारः स उच्यते ॥ अथार्क p. 596, स्मृतिसि. (II. p. 1), पर. मा. III. pp. 5-7, अ. म. pp. 3-4. This last verse is variously explained. Vide my notes to Kāt., 25. The मदनमाला (अथ, Ms. in my possession) explains 'अथस्तसाध्ये कष्टसाध्ये दुष्टक्षेपादिके विषये विच्छिन्ने स्वेच्छाया मोक्षमशङ्कये सति न्यायविस्तरे न्यायः धर्माय विस्तीर्यते अथ उच्यते निर्णीयते परस्मिन्स्वस्मिन् धर्माक्षये धर्मानानके धर्माधिकरणमिति धर्मिणे समालक्षणे स्वते साध्यमूलको यो दुष्टक्षेपादिविषयो वादः स व्यवहार इति' ; स्वधर्मस्य तथा प्राप्तिः परधर्मस्य वर्जनात् । न्यायेन यच्च क्रियते व्यवहारः स उच्यते ॥ हारीत q. by स्मृतिसि. (II. p. 1).

more elaborate definition (vide text p. 1 and notes pp. 3-4 of my ed.).

A *vyavahārapada*³²⁸ means 'the topic or subject matter of litigation or dispute'. It is the same thing as 'vivādapada' which word occurs also in Kaut. (III. 16 p. 191 and IV. 7 p. 218) and in Nār. (dattāpradānika 1, abhyupetyāśuśrūṣā 1). Manu VIII 8 shows that '*pada*' means '*sthāna*'. Yāj. II 5 defines it as 'If a person, who is set at naught by others in a manner that is opposed to the rules of *smṛti* and to good usage or conventions, informs the king (or his judge), that is a *vyavahārapada*'. From very ancient times eighteen *vyavahārapadas* have been enumerated. The underlying idea is that most of the disputes between men can be classified under 18 heads. Even Manu (VIII 8) was conscious of the fact that the enumeration of 18 *vyavahārapadas* was a matter of a convenient arrangement and that the number 18 did not embrace all disputes whatever but only the largest number of disputes and the most important among them. Medhātithi and Kullūka make this position quite clear.³²⁹

There is some difference about the number and nomenclature of the *vyavahārapadas* among Manu and other writers of *smṛti*s. The following table will give some idea of the divergence as to nomenclature and the sequence in which they are treated of. All do not mention them in the same order as in Manu VIII 4-7. For example, the order in Yāj. is *ṛṇādāna*, *upanidhi*, *dāyavibhāga*, *simā-vivāda*, *svāmipālavivāda*, *asvāmī-vikraya* &c. Yāj. does not enumerate all of them in one place as Manu and Nārada do.

328. व्यवहारः तस्य पदं विषयः । मिता० on वा. II. 6 : पदं स्थानं निमित्तमिति याज्ञवल्कि । अथर्वकः on the same.

329. बुधिद्वयद्वयं प्राधान्यद्वयपरमार्थम् । अन्वेऽपि व्यवहारेष्वेवः सन्ति पथा निव-
सनार्थं स्वपा मे वेदम दत्तं तत्र किमिदं वाक्यं तस्मादप्यस्मै ददातीति न चेदं दत्तान्नकर्तुं न
ह्यत्र स्वस्वनिवृत्तिरस्ति भोगाद्युपभोगाच्च वसतः । मेधा. on मनु VIII, 8 : बुधिद्वयद्वयेनाप्या-
श्रयि विवादप्रदाने सन्तीति सूचयति । तानि च यकीर्णकशब्देन नारदाद्युक्तानि । कुल्लूक
on the same.

MANU	KAUTILYA	YAJÑAVALKYA (acc. to Mīl.)	NĪRADA	BRHASPATI (in Sm. C. II. p. 9)
1 rñādana	5 rñādana	1 rñādana	1 rñādana	1 kñstāna
2 nīkṣepa	6 upanīdhi	2 upanīdhi	2 nīkṣepa	2 nīdhi
3 asvāmīvikraya	11 asvāmīvikraya	6 asvāmīvikraya	7 asvāmīvikraya	8 asvāmīvikraya
4 sambhūya-samut- thāna	8 sambhūya-samut- thāna	17 sambhūya-samut- thāna	3 sambhūyasamut- thāna	4 sambhūyotthāna
5 dattasyānapākarma	10 dattasyānapākarma (in III. 13 bare mention)	7 dattapradānika	4 dattapradānika	3 adeśadya
6 vetanādana	7 karmakarakaipa	11 vetanādana	6 vetanasyānapā- karma	5 bhṛtyādāna
7 samīdvyatikrama	4 samayasyānapā- karma	10 samīd-vyatikrama	10 samayasyānapā- karma	10 samayatikrama
8 krayavikrayānśaya	9 vikṛitakṛitānśaya	8 kṛitānśaya	9 kṛitānśaya	9 krayavikrayānu- saya
9 svāmīpālaviśāda	0	5 svāmīpālaviśāda	0	0
10 śmāvivāda	3 śmāvivāda	4 śmāvivāda	11 kṣetrajavivāda	7 bhūvāda
11 vākpārūsa	13 vākpārūsa	13 vākpārūsa	15 vākpārūsa	15 vākpārūsa
12 dandapārūsa	14 dandapārūsa	14 dandapārūsa	16 dandapārūsa	16 dandapārūsa
13 śtaya	0	18 śtaya	0	12 śtaya
14 sāhasa	12 sāhasa	15 sāhasa	14 sāhasa	17 vadina
15 strisaṅgrahana	1 (no name but subject dealt with in III. 2-4)	19 strisaṅgrahana	0	18 strisaṅgraha
16 stripundhara	2 dayavibhāga	3 dayavibhāga	12 stripumsayoga	11 stripumsayoga
17 vibhāga	15 dyūtasamāhvaya	12 dyūtasamāhvaya	13 dayabhāga	13 dayabhāga
18 dyūtasamāhvaya	0	9 abhyupetyāśusrūṣa	17 dyūtasamāhvaya	14 aksadevāna
0	16 prakīrṇaka	20 prakīrṇaka	18 prakīrṇaka	6 asūsrūṣa
0				19 prakīrṇaka

It will be noticed that Yāj. omits the duties of husband and wife from the 18 topics of vyavahāra as he had already dealt with them in his section on *ācāra*, adds *abhyupetyāśuśrūṣā* and *prakīrṇaka* (miscellaneous wrongs) and splits *krayavikrayānuśaya* into two and thus gives 20 topics. Nārada (I. 16-19) has the same 15 topics as those of Manu (in some cases under slightly different names), omits *svāmīpālavivāda*, *steya* and *strisaṅgrahana*, adds *abhyupetyāśuśrūṣā* and another topic viz. *prakīrṇaka* and splits *krayavikrayānuśaya* into two, viz. *kṛtānuśaya* and *vikriyānuśayaprādāna*. He includes *steya* under *sāhasa* (*sāhasa* verse 21) and also in what is an appendix. Bṛhaspati as quoted in the *Smṛti-candrikā* (vyavahāra p. 9) names the 18 vyavahārapadas and adds *prakīrṇaka*. Kautīlyā also adds *prakīrṇaka* and omits 'steya' under his *dharmaśthiya* section, though he deals with theft elsewhere (as in IV. 8 and 11). It is not to be supposed that the 18 topics were first started by the *Manusmṛti*. Gaut. XII. 1 mentions *vākpārūṣya* and *daṇḍapārūṣya*, treats of some of the topics without specifying the technical names e. g. he refers to the subjects of *saṅgrahana* (in XII. 2-3), of theft (XII. 12-13), of *svāmīpālavivāda* (in XII. 16 ff), of *ṛnādāna* (in XII. 26-33), of *nidhi* (in XII. 39), of *dāyavibhāga* (in XXVIII). Similarly the Āp. Dh. S. speaks in scattered places of some of the topics of vyavahāra such as murder (i. e. *sāhasa*) in I. 9. 24, of adultery in I. 9. 25. 1-2 and I. 10. 28. 15-20, II. 10. 26. 18 ff, theft in I. 9. 25. 4-11, *dāyavibhāga* in II. 6. 14, *vākpārūṣya* in II. 10. 27. 14. Vas. also mentions the word *dāyavibhāga* (in XVII. 40) and sets out rules about it and about means of proof (XVI. 13-15), about *ṛnādāna* (XVI. 31), about the twelve kinds of sons (XVII. 12-39). The Baud. Dh. S. (II. 2. 8) employs the word *dāyavibhāga* and gives several rules on that subject. Thus some at least out of the eighteen vyavahārapadas (such as *vākpārūṣya*, *daṇḍapārūṣya*, *dāyavibhāga*, *steya*) were distinctly recognized centuries before the present *Manusmṛti* was composed. Someśvara in *Manasollāsa* (II. 20. verses 1265-1273) enumerates 22 vyavahārapadas, by splitting *dattasāyānpākarma* into two as *datta* and *dattāpāhāraka*, adds *svāmībhṛtyavivāda* after *svāmīpālavivāda*, counts *krayavikrayānuśaya* as two and *dyūta-samāhvaya* as two distinct topics.

The definition of *vyavahārapada* in Yāj. II. 5 (= Śūkra IV. 5. 68) viz. 'If a person informs or complains to the king' (*āśedayati ced rājñe*) conveys that vyavahārapada means and includes only those disputes that are started or brought before

the Court at the instance of the parties. Manu VIII. 43 prescribes that neither the king nor his officers should start a dispute (i. e. a legal proceeding), nor should he sit silent upon (hush up) a matter which has been brought before him by another (i. e. by a party). Gaut. XIII. 27 lays down that a party should humbly approach a judge with his complaint. Kātyāyana (27) states: 'The king³³⁰ should not, through influence or through greed of money, take upon himself the disputes of men, when they do not themselves want to contend (in a court)'. Mānasollāsa II. 20 verse 1274 and Sukra IV. 5. 69 say the same. There must have always been several matters, of which nobody might complain and which the king might have to look into *suo motu*. Manu after dealing with the 18 vyavahārapadas (in VIII. 1 to IX. 251) requires the king (in IX. 252-253) to make efforts to destroy kṣāntakas (thorns, harmful persons) and dilates upon many aspects of his activities in this respect. Nārada relegates all matters in which the king took action *suo motu* to a separate topic, prakīrṇaka, about which he says 'under prakīrṇaka are comprised lawsuits depending on the king (i. e. on the king's own action) such as transgressions of the king's commandments and obedience to his injunctions, grants of towns, dissensions among the constituent elements (such as ministers) of the State, the duties and breaches thereof among heretics, followers of the veda, corporations (of merchants) and groups, dispute between father and son, neglect of prescribed penances, abstraction of gifts made to worthy persons, the wrath of hermits, sinful confusion of castes and the rules regarding their maintenance and (in short) whatever (matter) has been omitted in the preceding (vyavahārapadas)—these are treated under prakīrṇaka'.³³¹ Brhaspati defines prakīrṇaka in

330. न राजा नु वल्लिषेन वनलोमेन वा पुनः । स्वयं कार्याणि कुर्वीत नरानामविवाद्विनाम् ॥ कात्यायन १. by कुल्लुक on मनु VIII. 43, व. मा. p. 283 (which reads न वानमविवाद्विनाम्), स्वयं संवाद्विवाद्विनाम् समर्थः पृथिवीपतिः । नावृत्तिं तथोक्तोच्यते वर्ण कार्याधिना सुपः ॥ मानसोल्लास II. 20. 1274.

331. मकीर्णके पुनर्ज्ञेयो प्यवहारो कृपाश्चयः । राज्ञामाज्ञायतीवातस्तत्कर्मकरणं तथा ॥ पुरमदानं संनिधुः प्रकृतीनां तथैव च । पाशान्निगमभोग्यनिगमविपर्ययः । पितापुत्रविवादश्च पापश्चिन्तायातिक्रमः । मतिश्रविलोपश्च कोपश्चाभिमिनामपि । वर्णसङ्करदोषश्च बहुवर्णनियमस्तथा । न दृष्टं यच्च पूर्वेषु सर्वे लक्ष्यात्मकीर्णकम् ॥ नारद (मकीर्णक 1-4) quoted by the मित्रा on वा. II. 295. The स्मृतिचः (II. p. 331) reads पुरवर्णार्ण and explains पौलस्तिलेकप्रमाणम्. तत्र बृहस्पतिः । एष प्राद्विकृतः मोको प्यवहारः समस्ततः । कृपाश्चयं प्रवृत्तानि प्यवहारं मकीर्णकम् ॥ स्मृतिचः II. p. 331.

the same way as Nārada. Kautilya deals with the vyavahārapadas in his Dharmasthīya (III) section and in the Kāṭakaśodhana section (IV) speaks of matters that are similarly dealt with by officers called *pradeśṭās* (who correspond to coroners and police magistrates of modern times), while matters falling under the dharmasthīya section (viz. the vyavahārapadas) were disposed off by judges (called *dharmasthas*). Kāṭaka means in Kautilya as in Manu IX. 252 'harmful persons'. The chief matters that fell within the purview of the kāṭakaśodhana (removal or punishment of harmful persons) officers or courts were: Artisans like blacksmiths and carpenters were generally to work in guilds and receive from people materials for working them up; if they caused unreasonable delay in handing back finished articles, they were to receive one-fourth less than the proper wages and were to be fined twice the amount of wages; similar provisions are made for loss of wages and fines for weavers who do not increase the weight of cloth (cotton, linen, silk or woollen) woven up to the usual standard; washermen were to wash clothes on wooden planks or smooth stones, but if they washed them elsewhere, they were to pay compensation for loss caused and a fine of 6 *paṇas*; they were to be fined twelve *paṇas* for the sale, pledge or hiring out of other's clothes; they were also to be fined for keeping clothes with them beyond the time ordinarily required; for washing the best garments, garments of middling quality and inferior garments the wages were respectively one *paṇa*, $\frac{1}{2}$ and $\frac{1}{3}$; trustworthy persons and experts were to decide disputes about colour and wages; similar rules apply to tailors; goldsmiths, who

(Continued from the last page)

In an interesting paper contributed to the Sir Denison Ross volume of papers pp. 234-240 Dr. V. Raghavan describes a work called 'Vaiśyavandā-mūhākara' composed by Kōṭācala Mallinātha, the renowned commentator of the five classical Sanskrit Kāvya. This work is the report or decision given by a commission presided over by Mallinātha appointed to settle a dispute (which in these days might be called a caste question not cognisable by civil courts) that arose in the times of Devarāya II. of Viḍyānagara (1422-1466 A. D.). Vaiśyas were given a license to trade in the 24 cities and 108 shrines of the realm; certain subcastes like the Komaṭis claimed to be vaiśyas and this privilege also. Mallinātha decides after a searching examination of authorities that the words vaiśya, vanik, nāgara, ūruja, tṛtīya-jātiya are synonyms, that Komaṭis, who were styled vijātis by their rivals, were vaiśyas and entitled to all the privileges of vaiśyas. This decision would come under either वाचस्पति ... निर्वचनः or तद्व्यतिथिः.

without informing (government officers) purchased from unclean hands (i. e. from manial servants or slaves) without changing the form of the article or after changing the form, or purchased from a thief were to be fined respectively 12, 24 or 48 panas; for stealing one (gold) māśaka (one-sixteenth of a suvarṇa) from off a suvarṇa, the gold-smith was to be fined two hundred panas and for stealing one māśaka out of a silver *dharāṇa* there was a fine of twelve panas; fines are provided for loss of weight (beyond the recognised standard) in the case of working up copper, lead, brass, bell-metal, tin into vessels and articles; for manufacturing a counterfeit coin, for accepting it or passing it off to another the fine was a thousand panas and for entering a counterfeit coin in the royal treasury the punishment was death; a physician, who undertook the medical treatment of a patient without informing (government officers) of the dangerous nature of the disease, was to be punished with the first amercement if the patient died and with the middling fine if the patient died through the carelessness of the physician and if the patient suffered some vital injury, the matter was to be dealt with as assault (*dandapāruṣya*); musicians and actors shall stay in one place during the rainy season and shall avoid taking excessive gifts or indulging in excessive praise of one patron; for violating this rule the fine was twelve panas. The same rules apply to those who show dumb plays and to other mendicants, the latter receiving as many lashes as the fine imposed in similar cases on others. In IV. 2 Kautīliya prescribes fines against merchants that use false measures, weights and balances; that sell timber, iron, jewels, ropes, clothes misrepresenting them as superior when they are inferior; that conspire to prevent the sale of merchandise; that cause adulteration of grains, oils, salt, medicines &c.; that raise the prices beyond those fixed by the superintendent of commerce for local commodities and for foreign produce. In IV. 3 Kaut. provides for measures against such calamities as fire, floods, pestilential diseases, famine, rats, tigers, serpents and prescribes a fine of twelve panas for catching or injuring cats and mongooses employed to destroy rats. In IV. 4 Kaut. prescribes the measures that the officer called *saṁhartaḥ* has to take to protect the subjects against those who prey upon the people secretly by employing foul means. He has to employ spies under various disguises to find out the honesty or corruption of officers in the villages, of superintendents, of judges, of magistrates and witnesses and the punishment in these cases is generally

banishment. Kautilya IV. 5 deals with the detection of young men inclined to robbery and adultery by the employment of spies and agents *provocateurs* in the guise of ascetics and persons reputed to possess miraculous powers. The Kautilya IV. 6 and 7 respectively describe the seizure of criminals on suspicion or in the very act itself and examination in cases of sudden death. Kautilya IV. 8 speaks of questioning in the presence of the wronged party of the witnesses of the accused, whether they are his relatives or total strangers, as regards the country, the caste, the family, the name, occupation, property, friends and residence of the accused and of the application of torture to the accused to elicit an admission of guilt. It is said that torture is to be applied only in the case of those whose guilt is believed to be established *prima facie* (*ūptadoṣam karma kuraṇet*), that torture is not to be employed when the accused is guilty of a minor offence, is under age, old or diseased, is under the influence of intoxicants, or is a lunatic, or is overwhelmed by hunger or thirst or fatigue due to a journey, or has eaten to excess or is suffering from indigestion or is weak, nor is it to be employed in the case of a pregnant woman or a woman who was delivered of a child within a month; and in the case of other women only half the torture prescribed for males or only the asking of questions is to be employed. Learned brāhmanas and ascetics (when accused) are to be subjected to espionage only. Those who violate these rules or incite others to do so and those who are guilty of causing the death of an accused by torture are to be punished with the highest amercement. Four kinds of torture were employed in the case of complaints about wrongs viz. six dandas, seven whippings, two kinds of suspension, and (fourthly) water-tube (i.e. injecting salt water in the nose from a tube).³³² In this chapter Kauṭ. states that one who

332. The exact meaning of the four kinds of torture is not clear. Prof. V. R. Dikshitar in 'Hindu Administrative Institutions' pp. 237-247 tries very hard to establish that Kauṭ. recommends no torture in any case, that '*vākyaṇayoga*' means 'pronouncing of guilt by the jury' and '*karmānu-yoga*' means 'judgment of the Chief Justice'. Though the learned Professor's attempt to exculpate Kautilya may be due to laudable motives, the words of Kautilya are too clear to admit of any other interpretation than the one given above. If one dispassionately considers the fact that no *karma* was allowed to be employed in the case of the weak, the diseased, old men &c., that in the case of women '*ardhakarma*' alone was allowed, that a heavy fine was imposed for causing death by *karma* (*karmāṇa vyūpādānaḥ*).

charges an innocent man with being a thief or who conceals a thief is to be punished like a thief and that even one who is not a thief may for fear of torture admit that he is a thief, as Māndavya did. Kaut. in IV. 9 prescribes that the *śamāhṛty* and *pradeśṭṛs* should exercise control over all superintendents of the various State departments and their subordinates, that those who steal or seize valuable articles or jewels from State mines or manufactories should be simply sentenced to death, prescribes various fines and punishments for stealing or removing by force articles of different prices from the State granaries and store-houses, provides punishment for judges that threaten, browbeat, send out or unjustly silence or abuse litigants or that do not ask proper questions or ask improper questions, that cause unnecessary delay, unjustly rehear causes that have been heard or disposed of, and provides heavy punish-

(Continued from the last page)

that Māndavya, though really not a thief, declared that he was so through the fear of the torments of *karma* (*karmakleśabhayāt*), that in the four *karman* we find suspension and water-tube and that immediately after the words '*karma karayet*' we get the rule that in all crimes the *brāhmaṇa* was not to be subjected to bodily pain, it will have to be admitted that '*karma*' in this chapter of the *Arthashastra* means 'torture'. One fails to see what '*ardhakarma*' in the case of women will mean if '*karma*' signifies only the judgment of the chief justice or why Māndavya should have confessed theft through fear of '*karmakleśa*'. And one need not feel apologetic if Kautilya recommends torture in certain well-defined cases. Torture was an essential part in the Roman Criminal Procedure and Augustus had issued an edict about it. Vide Stephens' '*History of English Criminal Law*' vol. I, pp. 47-49. Torture by the police and third-degree methods are not unknown in the 20th century in the West (even apart from the latest German methods) or in India, though they are not expressly mentioned in any text-book or Act as allowable. Vide Harry E. Barnes' '*Story of Punishment*' pp. 10-15 for various kinds of tortures employed in the West for several centuries and third-degree methods (pp. 15-24), which he asserts are even now in almost universal use by the Police Department in the U. S. A. The story of Māndavya who though not a thief was held to be a thief, because he, owing to his vow of silence, did not reply when questioned and near whom was found the booty stolen and who was impaled, is found in *Ādi.* 63, 92-93 (cr. ed. chap. 57), *Ādi.* 107-108 (cr. ed. chap. 101), *Anuśāna* 18, 46-50 and in *Nār.* (I. 42) and Br. quoted by Aparāṅka (p. 599). शुले मोकः पुराणविचोरेचोरेण्डुपा । अनीमाण्डव इत्येवं विलपातः सुमहापद्मः ॥ अदि 63, 92-93. Kaut. IV. 9 appears to have had a different version of the story before him. The *Mārkaṇḍeyapurāṇa* chap. 16 has the story of Animāndavya. The story of Māndavya was a leading case, it appears, in criminal law. The *Mṛcchakatika* (Act IX. 36) appears to refer to torture.

ments for releasing persons jailed or for rape on a woman in a lock-up. Kaut. IV. 10 prescribes alternative punishments of fines in lieu of the cutting off of fingers or mutilation of limbs for several offences such as theft or assault, abuse and defamation or showing contempt to the king by riding his horse or other conveyance or fabricating royal orders, prescribes death for selling human flesh, simple death or highest amercement for stealing images of gods or animals, for abducting human beings or for wrongfully seizing fields, houses, gold, gold coins, jewels and crops. Death with or without torture is provided for in Kaut. IV. 11 for murdering a man in a quarrel (but when the wounded man dies a fortnight or a month after the quarrel, highest fine or fine of five hundred *panas* and the expenses of medical treatment); different kinds of punishments are provided for wounding with a weapon, impalement for causing violent death of men and women, burning alive for those who aim at securing the kingdom or force entrance into the royal harem or incite wild tribes or enemies or instigate disaffection in the capital or country or army, drowning (or solitary confinement in a dark room, acc. to another reading) for a brāhmaṇa offender of this sort, cutting of tongue for insulting or abuse of parents or a teacher or an ascetic, drowning for one destroying the dam of a tank or for a poisoner or for a woman murdering a man, tearing to death by bulls for a woman who murders her husband or child or her elders or administers poison or sets fire. Kaut. adds that the punishment of death with torture has been prescribed by ancient smṛti-writers, but that it is proper to order simple death in cases of offences in which no cruelty enters. Kaut. IV. 12 starts by declaring that no man shall have sexual intercourse with a woman (not his wife) against her will, prescribes different punishments for forcible sexual intercourse with an immature girl or a girl that has attained maturity, of the same caste, or of a different caste, provides that for intercourse with a willing maiden the fine will be 54 *panas* for the man and 27 for the maiden, further provides that it is no offence for a man of the same caste to have intercourse with a maiden who has not been got married for three years after the appearance of menses, provides fines for deceitfulness in substituting one girl at marriage while showing another before, provides that if a woman whose husband is gone abroad commits adultery a relative or servant of the husband may keep her under restraint and that if the husband on his return forgives the woman her paramour may not be proceeded against,

but if he does not condone, the nose and ears of the woman may be cut off and the paramour should be sentenced to death. Kaut. IV. 13 provides punishment for brāhmanas eating or drinking what is forbidden to them and varying fines for administering forbidden food or drink to members of the four varṇas, provides fines for house-trespass and lurking house-trespass by night, provides punishments for witchcraft, provides burning alive in a vessel for adultery with the queen and other punishments for adultery with women of the several castes, whether guarded or unguarded, prescribes a fine of 24 paṇas for adultery with a nun.

The above is a meagre summary of Kautilya's section on kṛtakasodhana. Kautilya is encyclopaedic on this subject as on several others. The number of offences dealt with by him is very large and his treatment in some respects compares favourably with such modern criminal codes as the Indian Penal Code. Many of the provisions contained in Kaut. IV are found in Yāj. (II. 273-304), in Nārada (in prakīrṇaka and elsewhere) and also in Manu (e. g. VIII. 365-368 about rape or adultery, VIII. 396-97 about washermen and weavers, IX. 225-226 about musicians and dancers, IX. 231-232, IX. 261-267). Why Kaut. treats of several offences under kṛtakasodhana and not under the dharmasthiya section, it is somewhat difficult to say. It is probable that he included under dharmasthiya only those complaints or actions that were fought out between the parties, even though many of the wrongs complained of under vākparusya, danda-parusya, saṅgrahana and steḥa were criminal and the same as those treated of in the section on kṛtakasodhana. In wrongs dealt with in the kṛtakasodhana section it was the king or king's officers who themselves brought up the offenders for punishment and the offences were viewed not as mere private matters, but as matters in which the State was concerned for the eradication of crime in general. Kautilya in III. 20 speaks of prakīrṇaka but therein he seems to include some miscellaneous matters like non-return of borrowed articles or deposits (at the proper time and place), evading payment of ferry tax under the pretence of being a brāhmaṇa, connection with a public woman kept by another, misappropriating revenue collected as agent for a householder, a cāṇḍāla's touching an Ārya woman, inviting for dinner in honour of Gods and Manes Buddhist or Ajīvaka or Śūdra mendicants, abandonment of parents, child, wife or husband, brother or sister, teacher or pupil (when not

guilty of a grave sin), wrongful confinement of a person &c. Kautilya does not apparently include under *prakṛpaka* all matters in which the king acts *suo motu* as Nār., Br. and Kāt. do but includes these latter under *kantakaśodhana*. He, however, states here and there (IV. 1 and 13) that the matters dealt with under *kantakaśodhana* are quite analogous to those under such titles as *dandapārusya* treated of under the *dharmasthīya* section. For example, in IV. 1. he says that if a physician through negligence causes loss of a vital part to a patient then the matter may be treated as *dandapārusya*.³³³ So Kautilya probably represents a much earlier stage of judicial administration than Nār. or Br., who included under *prakṛpaka* all matters in which the king acted of his own motion (i. e. all that falls under *kantakaśodhana* in Kaut.).

The enumeration of *vyavahārapadas* is very ancient and authoritative, but there is hardly any scientific principle of classification underlying them. A writer called Nibandhanakāra quoted in the *Sarasvatīvilāsa*³³⁴ (p. 51) holds that in all the *vyavahārapadas* from *ṛṇādāna* to *dāyavibhāga* the relief claimed is something to be given or rendered (*deya*) by one party to the other, while in *vākpārusya*, *dandapārusya*, *sāhasa*, gambling and betting the principal relief is in the form of *daḍa* (punishment). Here there is a glimmering of the distinction between civil and criminal litigation. Two deep-seated principles in the administration of law and justice everywhere are 'fulfil your promises' and 'cause injury (*himsā*) to no one'. It is therefore that we find Brhaspati stating that lawsuits are of two kinds according as they originate in (demands about) wealth or in injuries. Yāj. II. 23 speaks of *arthavivāda* (civil dispute) and so made a distinction between civil and criminal disputes. Lawsuits³³⁵ originating in wealth are divided into

333. निषजः कर्मापराधेन विपत्तौ मध्यमः । मर्मवेद्यैस्तुण्यकरणे दण्डपारुष्ये विधातु । अर्थशास्त्र IV. 1; दुर्बले वेदेन शक्यतमस्तुण्यमुर्ध्वसम्भोजनपात्रमयमतिष्ठत्वं श्वश्रुं कुर्यात् कृतापराधं वा कृत्वा हिंसायां दण्डपारुष्ये विधातु । अर्थशास्त्र IV. 13.

334. तथा च नीलमस्तुत्रम् । द्विस्थानतो द्विमितिरिति । व्यवहारो दण्डस्तुत्रव्यते । तत्र निषधनकारेणोक्तम्-ऋणादानादिद्वयविभागान्तरां देवनिष्कण्ठत्वं साहसाद्विषयकारणं दण्डनिषधनत्वमिति द्विस्थानतोत्तरं भवति । स. वि. p. 51.

335. द्विपदौ व्यवहारः स्वाज्ञानहिंसातत्त्वद्वयः । हिंसकौर्ध्वमूलस्तु हिंसामूलव्यतुर्विधः ॥ ... एवमर्थतत्त्वस्थानि पदानि तु चतुर्विधं । पुनरेव त्रिभिन्नानि क्रियाभिर्वादानेकधा । पादव्यते द्वे साहसं च परस्त्रीसंग्रहस्तथा । हिंसोद्भवपदान्येवं स्वाध्यायः सुवस्थतिः । स्मृतिच. II. p. 9, २७. मा. p. 377 (for first verse), पर. मा. III. pp. 20-21; साधुं वादस्व मूलं स्वाज्ञादिना यस्मिन्नेदितम् । देवादानं हिंसा श्वेतुस्थानदण्डस्तुत्रव्यते ॥ कारायात (30) quoted in सुतिच. II p. 13.

fourteen sorts and those originating in injuries are of four sorts. These last are *vākpārasya* (defamation and abuse), *dandapārasya* (assault and battery), *sāhasa* (murder and other forms of violence) and *strisaṅgraha* (adultery). Here there is a clear distinction made between civil disputes (*arthamūla* or *dhanamūla*) and criminal ones (*himsā-mūla*). Kāṭ. also says that disputes have their source in two viz. not rendering what should be given and injury (*himsā*). Though in this way a distinction was made between civil and criminal disputes among the 18 titles of law, it appears that the set of rules and the procedure in both were the same (except as to the time allowed for reply, as to the qualifications of witnesses and as to proxies), the same courts tried both kinds of disputes and not as in modern times (when civil disputes are tried in one class of courts and criminal complaints in another and when the procedure also in both differs a great deal). There were not two sets of courts in ancient India as there were in England before the fusion of Law and Equity, but all courts in ancient and medieval India were required to administer the law of the texts tempered by common sense and reason as laid down by Br.: 'a decision should not be given by merely relying on the text of the *sāstra*; when consideration of a matter is divorced from reason and common sense loss of *dharma* results' (q. by Aparārka p. 599).

Nār. (I. 8-29), Br., Kāṭ., the Agnipurāṇa (253, 1-12 which reproduce almost *verbatim* the verses of Nār.) and others predicate several things about *vyavahāra*, such as that it is *diṣṭhala* (has two results) and so on. All these are brought together here below for convenience. *Vyavahāra* is:—

Caturpād—having four feet, viz. *dharma*,³³⁶ *vyavahāra*, *caritra*, *rājāsāsana*, acc. to Nār. (I. 10); while acc. to Yāj. II. 8

336. Among the verses at the end of IV. 1 of the Arthasāstra the following two verses occur: धर्मेन व्यवहारस्तु चरित्रेण राजशासनम् । विवादार्थं चतुष्पादः पश्चिमः पूर्वबाधकः । इयं सत्ये स्थितो धर्मो व्यवहारस्तु साक्षिदुः । चरित्रं संशये दुर्गं राजाभाजा तु शासनम् ॥ These two occur in Nār. (I. 10-11) and Hārta (q. in S. V. p. 58) with variations, viz. both read चतुष्पादु व्यवहारोपसुत्तरः पूर्व- and चरित्रं दुस्तकारणे. Par. M. III. p. 10 reads चरित्रं तु स्वीकारणे. Lengthy explanations of these verses are offered in Aparārka (p. 597), Smṛticandrikā (II. pp. 10-11), Vyavahāra-prakāśa (pp. 7, 88-89) and other digests. It has to be noted that the four (*dharma* &c.) mentioned in these verses are the means of arriving at a decision in a law-suit, as Br. says: धर्मेन व्यवहारेण चरित्रेण सुपाज्ञया । चतुष्पादोऽभिहितः सन्दिग्धार्थे विनिर्णयः ॥ (in स्मृतिच. II. p. 10, परा. मा. III. p. 16, न्य. प. p. 6); व्यवहारोपि चरित्रेण बाध्यते चर । साक्षिभिः साधितेऽप्यधीरक्षिपः दुष्टान्वरोपनोपे सद्रूपे च व्यवहारतः यतोपि राजकुलाधिपतडिजितान्जिते । एवं हि तत्र लिखितव-आभीरक्षिणां व्यवहारोपि सति दुग्धो न बाध इति । अपराक p. 597 (on वा. II. 17.)

and Br. they are the plaint, the reply, the proof (*kriyā*) and decision (*nirṇaya*) or acc. to Kāt. 31 (q. by Aparārka p. 616) plaint, reply, *pratyākālita*³³⁷ and *kriyā*.

Dharma and the other three are really the four feet of *nirṇaya* (final decision), which is one of the four stages of a law-suit (*vyavahāra*) and so only in a secondary or far-fetched sense they are the four *pādas* of *vyavahāra*. Each of these four is said to be of two kinds. Vide Sm. C. II. pp. 10-11, Par. M. III. pp. 198-199, V. P. pp. 87-88 where the verses of Br. are set out and fully explained. A decision is said to be arrived at according to dharma when the wrong-doer admits his guilt or wrong-doing and the real owner secures his wealth or the relief due to him without having to undergo the trouble of a protracted trial by means of witnesses, documents &c. Similarly a decision to be arrived at by ordeals is said to be one by dharma. Dharma and *satya* are often identified (vide note 125 above) and here the wrong-doer tells the truth and the decision is therefore said to be by *dharma*. When a litigation is fought out in Court by citing witnesses, the decision is said to be by *vyavahāra*. 'Witnesses' are mentioned only by way of illustration (and imply documents, possession and other means of proof). When a defendant is guilty of not giving a straight reply or when his reply is tainted with faults and so is unacceptable and a decision is given against him on that ground alone it is still a decision by *vyavahāra*. *Caritra* means 'the usages of a country, village or family' (*deśasthitiḥ pūrvakṛtā caritraṁ samudāhṛtam*—Vyāsa q. in Sm. C. II. p. 11 and Vy. Nir. p. 138). This seems to be the sense of 'caritra' in 'phalakavāre charitratoti' occurring in Nasik Inscription No. 12 in E. I. vol. VIII. p. 82. In *prakīrnaka* 24 Nār. seems to give the same sense 'sthityartham prthivīpālāis. caritraviśayāḥ kṛtāḥ'. *Caritra* also means 'anumāna' (possession and presumptions). 'Anumānena nirṇitam caritramiti kathyate'—says Br. quoted in Vy. Nirṇaya p. 139 and Par. M. III. p. 198. Usages are the means of decision in certain cases apart from the question whether they are supported by the *śmṛtis* or

337. *Pratyākālita* means, acc. to Aparārka p. 616, the deliberation of the judge and sabbhas as to where the burden of proof (*onus probandi*) lies and as to the method of proof. Acc. to the Mīm. on Yāj. II. 8, *pratyākālita* in this sense is not a *vyavahārapāda*, since it is not directly related to the litigants. Acc. to Nār. II. 21 *pratyākālita* seems to mean an addition to the plaint or to the reply (i.e. a supplementary written statement). वादिगवां लिखिताच्छेपं पाशुनवादिना स्मृतम् । तस्यवाक्यलिखितं नाम स्वभावे तस्य लिख्यते ॥

not. 'Caritram pustakarane' means that such usages are valid means of decision if they have been written down or recorded by the king, while 'caritram tu svikarane' (the reading in Par. M.) means 'usages become the rule of decision when they are accepted as valid by the people and by the courts'. When a king issues in a matter of dispute an order which is not opposed to *smṛtis* or local usages and which is thought out as the most appropriate one by the king's intellect or which is issued to decide a matter when the authorities on each of two sides are equally strong, it is a decision by royal command. Br. (in Par. M. III. p. 148) and Kāt. (verses 35-38 q. in Sm. C. II. p. 10, Par. M. III. pp. 16-17, V. P. p. 7) explain the above four. Brhaspati gives two meanings of *caritra*: (1) what is decided by inference; (2) the usages of a country. When it is said that each later one of the four stultifies each preceding one, the idea is not that in all cases it is so, but that it is so only in some cases. Vide Kāt. (43 q. by V. P. p. 90) which makes this clear. Some examples may be given. If one litigant says that he would prove his case by an ordeal, while the other says that he will prove his contention by human means (documents or witnesses &c.), then the trial by ordeal is not to be resorted to but the hearing of the case is to proceed in the ordinary way. Vide Kāt. 218 (q. by Mīt. on Yāj. II. 22) for this rule. Here *dharma* is set aside in favour of *vyavahāra*. Another example is given in the Par. M. III. p. 18. A person belonging to one of the four *varṇas* commits a seditious act (*rājadroha*) and through timidity admits his guilt (this is *satya*), but the witnesses (relying on Manu X. 130 that where the punishment would be death, a witness may tell a lie) deny that he was guilty of the act and he is let off. Here *dharma* is set aside in favour of *vyavahāra* (trial based on the depositions of witnesses). Vide Sm. C. (II. p. 11) for another similar example. In the country of Kerala visiting a prostitute was not condemned by custom. So even though it is established by witnesses that a person in Kerala did so, the local king may not punish him with a fine. Or suppose a person is charged with the offence of adultery with the wife of an *ābhira* and this fact is established by witnesses. Yet the man charged may show that among the *ābhiras* there is a usage (written down in the census records of the king) that adultery with an *ābhira* woman is not punishable. In such cases *caritra* (usage) annuls the (ordinary) *vyavahāra*. But suppose that in such cases the king, in order to improve the morals of a section of his subjects, issues a

proclamation that from the date of the proclamation one who is guilty of adultery with an abhīra woman will be punished, then in that case usage will be set aside by royal command, which will then be the rule of decision. Similarly where there are no witnesses nor documents nor possession and no room for ordeal and there are no texts and local usages it is the king who has to decide as best as he can. Vide Pītāmaha q. in Sm. C. (II. p. 28). Kāt. (verses 39-43 q. in V. P. p. 89) describes how and when each later one sets aside each prior one.

Catusthāna—having four bases viz. satya, witnesses, pustakaraṇa and rājāsāsana.

Catuṣādhanā—having four means viz. sāma, dāna, bheda and dāṇḍa.

Caturhita—benefitting the four (the four varṇas and four āśramas).

Caturvyūpin—that envelopes or reaches four viz. the disputants, witnesses, the sahyas and the king.

Catuṣkārīn—that brings about four results viz. dharma (justice), gain, renown, love or regard of the people.

Aṣṭāṅga—it has eight limbs or members viz., the king, his good officer (chief judge), sahyas (*pains* judges), śāstra (law books), accountant, scribe, gold, fire and water.

Aṣṭādāśapada—has eighteen titles (viz. rṇādāna and others enumerated above).

Śataśākha—having a hundred branches. This is approximate. Nār. (I. 20-25) states that the 18 titles have 132 sub-heads (rṇādāna 25, upanidhi 6, sambhūyasamutthāna 3, dattapradānika 4, asuśrūṣa 9, vetana 4, asvāmivikraya 2, vikriyādāna 1, kritānussaya 4, samayasyānapākarma 1, ksetravāda 12, strīpumsayoga 20, dāyabhāga 19, sāhasa 12, vākpārasya and dandapārasya 3, dyūtasamāhvaya 1, prakirṇaka 6).

Trigoni—having three springs or motives viz. kāma (sexual desire), krodha (hot temper), lobha (greed).

Dvayahuyoga—founded on two kinds of complaint viz. on suspicion or on fact. Nār. I. 27 says that a complaint on suspicion may be made against those who associate with men of evil repute (such as thieves, gamblers and dissolute persons) or it may be made on the ground that a certain person is really

the thief because the thing stolen is found with him (this is *tattvābhīyoga*). This latter may take two forms i. e. the grievance of the plaintiff may be negative (e. g. the defendant took or borrowed a debt or article and does not return it) or positive (e. g. the defendant has dispossessed the plaintiff of land).³²⁸ Vide Mīt. on Yaj. II. 5.

Daidvāra—having two openings i. e. it is based on the statements in the plaint and those in the reply.

Dvīgati—having two issues, that is, the decision may be founded on truth or on error.

Dvāpada—having two aspects, viz. relating to wealth and so civil (*dhanamūla*), and relating to injury and so criminal (*himsāmūla*). This is acc. to Kāt. 29.

Dvurutthāna—having two springs or sources. It is the same as above. Hārta and Kāt. 30 mention this.

Dvīskandha—having two trunks viz. *dharmaśāstra* and *arthaśāstra* (acc. to Kāt. 32).

Dvāphala—having two results, victory or failure (Kāt. 32).

Ekamūla—Hārta and Kāt. mention this. It means 'having only one (viz. what is to be established) as its root'.

Sapana and *apana*—where both parties to the litigation or one of the parties stakes (either through pride or anger or belief in the truth of his case) a certain sum of money to be paid by him in case of his defeat, that is called *sapana* law-suit (Yaj. II. 18); in this case the defeated party will pay to the king the usual fine for a defeated party and also the sum staked by him and will deliver to the successful party what is due to him. Vide also Visṇudharmottara III. 324. 44. A lawsuit may also be *apana* (without a stake being declared). Nār. (I. 4) employs the words *sottara* and *anutara* for these two.

The Sm. C. (II. pp. 27-28), Par. M. (III. pp. 42-45), Sarasvatīvilāsa pp. 73-74, V. P. pp. 36-38, state that, according to Pītāmaha, the king may take cognizance of his own motion without

328. 'न्यायं नैवेष्टुं कर्तुमन्यायं वा करोति च । न लेखयति । यस्त्वेवं तस्य पक्षो न सिध्यति ।' कात्या. q. by विचित्ररूप (on वा. II. 6), स्मृतिच. II. p. 39, मिता. on वा. II. 5. 'न्यायादर्थं मदीयं धर्मं यदीत्या न बुद्ध्यातीतिवत् । यतिप्रेमरूपेण वा मदीयं क्षेत्रादिकमपहरतीति वा चिथिच्छेदेण वा यो न लेखयतीत्यर्थः ।' स्मृतिच. II. p. 39.

the complaints of private persons of certain matters called *aparādhas*, *padas* and *chalas* and these works set out the lists of ten *aparādhas*, 22 *padas* and 50 *chalas*³³⁹. The king may himself come to know about these or these matters may be brought to his notice by an officer called *sūcaka* or a private man called *stobhaka*, defined acc. to Kāt. (33-34) as follows:—³⁴⁰ that man is declared to be *sūcaka* who is appointed by the king himself for finding out the wrong-doings of people and who on coming to know of them conveys them to the king; that man is a *stobhaka* who with a sole eye to money and without being urged by the king informs the king first of actions (among the people) that are condemned by the *sāstras*. Therefore a *stobhaka* is a private informant for money. The ten *aparādhas*, acc. to Nār., are: disobedience of the king's order, murder of a woman, confusion of varṇas, adultery, theft, pregnancy from one not the husband, abuse and defamation, obscenity, assault (*danda-pāruṣya*), abortion³⁴¹. They were called *aparādhas* because they were met with fine. It will be noticed that some of these come under several *vyavahārapadas* and some like 'varṇasankara' are included in *prakīrnaka* by Nārada (v. 4). The king could by his own action investigate these even if no private complaint be lodged. Samvarta (quoted by the Sm. C. II. p. 28, Par. M. III. pp. 44-45) gives another list which differs in some respects from the above. In the Nālandā copperplate of Devapāladeva (E. I. vol. XVII p. 310, p. 321) an officer called '*daśāparādhika*' is mentioned. In many grants from the 7th century onwards among the taxes remitted to the donees we often meet the expression 'together with the ten *aparādhas*' (*śadaśāparādhah*', in Valabhi grant of Dhruvasena III dated samvat 334 i. e. 653-4 A.D., E. I. vol. I p. 85, at p. 88, E. I. XVII p. 310 at p. 321, in Gupta Ins. No. 39 p. 179 of 766-767 A. D.), or '*daśāparādhādisamastot-pattisahito dattah*' (in E. I. vol. VII p. 26, p. 40 of sake 852), or

339. एतानि चापराधांश्च पदानि सप्तोक्तया । स्वमेतानि दृष्ट्वापान्दपरत्वादेव
कीर्तया ॥ वितामह q. in स्मृतिच II. p. 27, परा. मा. III. p. 42.

340. शास्त्रेण निन्दितं स्वर्गमुत्तमो राज्ञामचोदितः । आवेदयति परपूर्वं स्वोभयः स
उदाहृतः ॥ स्वपैव निवृत्तो यः परदोषमवेक्षितय । स्वपरं सूचयेत्ज्ञात्वा सूचकः स उदाहृतः ॥
कार्त्तव्यम q. in स्मृतिच III. p. 28 (reads सुरुषश्चाप्यचोदितः), परा. मा. III.
p. 45 (reads स्वयं सुरुषश्चाप्य and स्वपरं समर्थं ज्ञात्वा), स्व. म. p. 38 (reads
परदोषानवेक्षणे).

341. आज्ञालङ्घनकर्तारः स्त्रीष्वथो वर्णसङ्करः । परकीयमथ कीदृशं गर्भश्रवणं पतिं विना ॥
शक्यावप्यमृतार्थं वृद्धशपाकर्ममेव च । गर्भस्य पातनं स्त्रीष्वपराधा द्वौव तु ॥ नारद q. in
स्मृतिच. II. p. 28, परा. मा. III. p. 44, स. वि. p. 75, वृद्धनीतिमकरण of केतव p. 12.

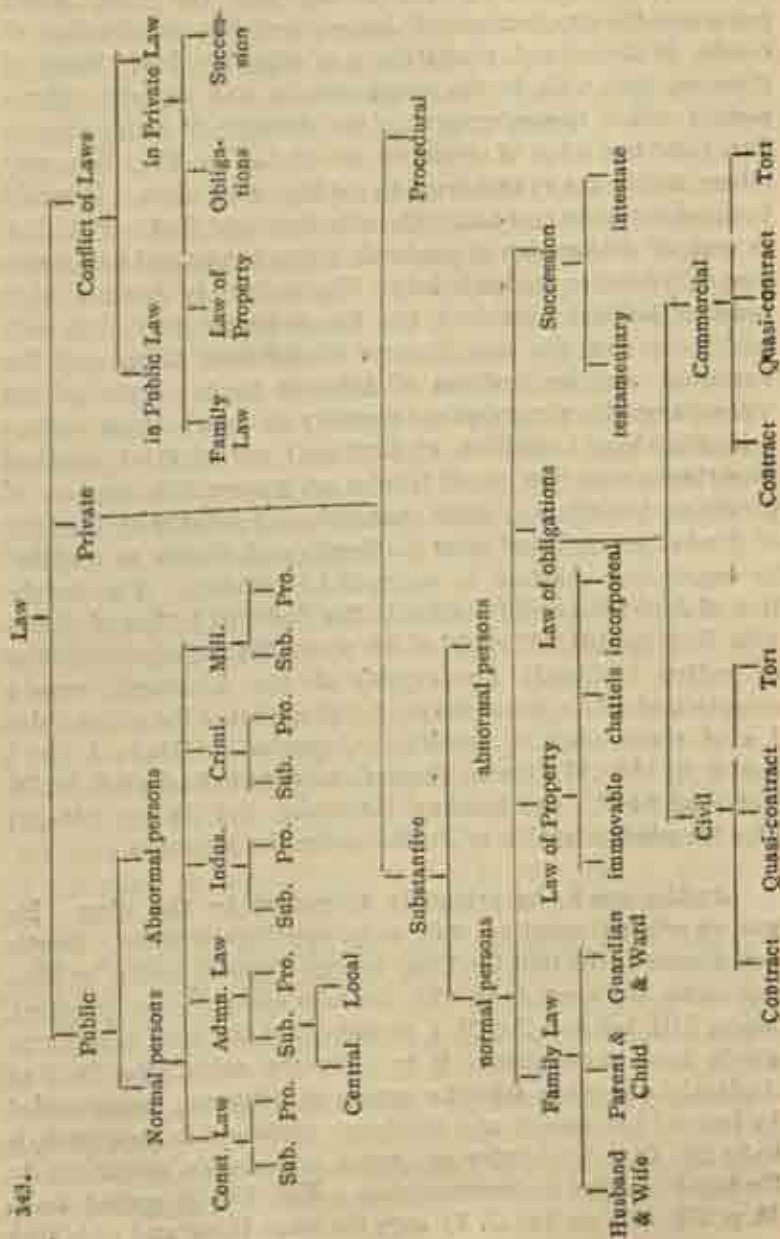
'*sadāṇḍadaśaparādhaḥ*' (E. I. vol. III p. 53 at p. 56, Torkheda plate of Govinda in śake 735, and E. I. vol. III p. 263, 266, the Rajor inscription of Mathanadeva dated Vikrama samvat 1016). It is not correct to hold that the words refer to the right of the donee to be exempt from guilt arising from the commission of some traditional offences or that authority was conferred by the grant on the donee to deal with offenders committing the ten *aparādhas* and to recover the fines imposed by themselves (as suggested in J B O R S for 1916 p. 53n). No king would ever think of exempting donees in pious gifts or the villages in those grants from the results of such grave *aparādhas* as the murder of a woman, adultery, theft and abortion, nor is it possible to hold that a king authorised a private individual or individuals to exercise judicial power in such crimes as murder when (as we shall see later on) the power of dealing with *sāhasa* was not conferred on śreṇi or gana tribunals. The real meaning appears to be that the fines levied by him for the commission of the *aparādhas* in the villages granted would be made over to the donees as part of the gift, when recovered by the king. The 22 *padas* were called *padas* of the king to distinguish them from the *vyavahārapadas*. According to *Pitāmaha*³⁴² they are: ripping open an animal's body (with a sharp weapon), destruction of growing crops, incendiarism, rape of a maiden, concealment of treasure trove, making a breach in an embankment or thorny hedge, grazing cattle over the field of another, destruction of a public garden, poisoning, high treason, unauthorised breaking of the royal seal, divulging the secret line of policy of the king, releasing from jail a prisoner, appropriation of the taxes or fines to be levied by the king (these are two), appropriating gifts (made by the king) or the *utseka*

342. उत्कर्त्ता सत्त्वपाती चापदग्निद्वयं तथैव च । विषसंकाः कुमारीष्व निधानस्वोप-
 योगकः । सेतुकण्डकमेता च लेखसञ्चारकस्तथा । आरामश्लेष्मद्वयं वरद्वयं तथैव च । राज्ञो
 ब्रह्मभक्ता च तन्मुद्राभेदकस्तथा । तन्मन्त्रस्य प्रमेता च बद्धस्वैव च मोचकाः । भोगद्वन्द्वौ
 च दृष्टानि दानमुत्सेका च (? सुतर्पणस्य) च । पट्टह. घोषणाच्छादी इत्यमस्वामिजं च पत् ।
 राजावलीर्द्धं इत्ये पट्टवैवाङ्गविभाजनम् । इति शक्तिः पदान्वातुर्गुणज्ञेयानि पण्डिताः ।
 द्रुतिच II. p. 28, परा मा II. p. 45, स. वि. p. 73, म. य. p. 37. The passage
 is somewhat corrupt ; स. वि. gives a summary in prose and begins with
 चिकृच्छति, while the rest read उत्कर्त्ता or उत्कर्त्ता. म. य. and दृष्टान्तिपत्रकम् p. 12
 reads दानं विक्रयमेव च (which would mean 'appropriating a gift or property
 sold by the king').

(? *utsarga*, dedication to the public), preventing the proclamation (of royal orders) by beat of drum from being heard, receiving property from a person who is not the owner, receiving articles that are enjoyed by the king (without his permission), causing destruction (or loss) of any one of the (seven) elements (of the State). The fifty *chalas* were mostly breaches of etiquette before the eyes or in the presence of the king. According to Pītāmaha they are: obstructing the road, raising the hand threateningly, leaping over a fort-wall (without permission or reason), destroying a cistern, destroying a temple, filling up a ditch (dug round a fort), divulging the weak points of the king (to the enemy), unauthorized entrance into the harem or royal chamber or the treasury or the royal kitchen (these are four), prying when the king is taking his meals, voiding ordure or urinating or blowing the nose or passing wind in the presence of the king (these are four), to sit before the king on haunches (*parṇaikāśma*), to occupy the foremost seat in the king's presence, to enter royal presence in a dress more resplendent than the king's or supported by another or by the wrong-doer or at an improper time (these are four), to lie down on the bed or seat of the king or to put on his shoes (these are three), to go near the king (uncalled) when the latter is lying down on his bed, to serve the king's enemies, to occupy a seat that is not offered, to use gold in the dress or ornaments (these are two), to take tāmḇula (from the king's betel box) and chewing it (this is one), to speak loudly without being asked (by the king), to run down the king, to wear only one garment, to appear before the king with oil on the hair, to untie the hair (before him), to cover one's face, to have a body painted with figures, to wear a garland, to shake one's garment, to cover the head, to be bent on finding the weak points of the king, to be thick with evil men (or to touch the king), to have dishevelled hair, pointing out the nose, the ears and the eyes (these are three), to pick the teeth, to cleanse the ear or the nose (these are two). As the list of *chalas* is a very long one the verses are not quoted below, but are given in the Appendix (note 342 a). Śukra (IV. 5. 73-88) quotes all the verses from Nārada and Pītāmaha on the *aparādhas*, *padas* and *chalas* and in III. 6 also gives a list of ten sins, which is different from that of the *aparādhas*.

22. In modern works on Jurisprudence various classifications of Law are stated. For example, Dr. E. Jenks in 'New Jurisprudence' (1933) furnishes at the end of his work a very

elaborate classification which is set out in the note below.³⁴¹ Ancient systems cannot be expected to present such a classification. Ancient Hindu smritis were content, as shown above, to



divide the *vyavahārapadas* into civil and criminal. They more or less deal with most of the subjects brought out in modern classifications but not in an orderly manner. They also divide laws into substantive and adjective or procedural. The *vyavahārapadas* correspond to the former and the rules about procedure, the appointment of Judges and the constitution of courts, evidence and limitation are adjective law. Some of these are dealt with in the commentaries and digests under a section called *vyavahāramūlīkā* (the elements of judicial procedure) and the rules of evidence are stated in Yāj., Nār. and others under the *vyavahārapada* *ṛnādāna* once alone. It would be more convenient to deal with adjective law first. That law is now of antiquarian or academic interest only and will therefore be treated somewhat briefly. The *smṛtis* lay down a high level of judicial procedure, but the procedure must have been modified to suit the requirements of different times and the resources and inclinations of different kings. Some of the *vyavahārapadas* viz. *ṛnādāna* (recovery of debt), *stripuṃsavyoga* and *dāyabhāga* (partition of heritage) are of great practical importance even now, as all Hindus are governed in matters of partition, inheritance, debts, marriage and sonship by the rules of Hindu Law gathered from the *Smṛtis* and digests as modified by legislative enactments and judicial decisions. For description of Judicial administration in the Buddhist texts and times, vide Fick pp. 107, 111-112 (which show that the administration of justice in Vesālī, the capital of the Licchavis, was a complicated affair, one of the courts being that of the *atthakulakas* i. e. of eight heads of families), Jayaswal's 'Hindu Polity', part II pp. 156-157, Hiouen T'sang's account in Beal's B.R. W. W. Vol. I pp. 84-85; and Bombay Gazetteer, Vol. 24 pp. 266-267 (for the administration of Justice under the Marathas).

Justice was to be primarily dispensed by the king. He was an original court as well as an appellate tribunal. *Smṛtis* and digests insist that the king cannot dispense justice by himself alone, but must do so with the help and guidance of others. Manu VIII. 1-2 and Yāj. II. 1 provide that the king wearing no gaudy dress or ornaments is to enter the *sabha* (the Hall of Justice) for looking into the causes of litigants, accompanied by learned *brāhmanas* and ministers proficient in statecraft, is to be free from hot temper and greed and decide according to the law laid down in *dharmaśāstras*. Kāt. (55-56 quoted in V. M. p. 278, Mit. on Yāj. II. 2) says the same thing and adds that

a king who examines disputes in the presence of the Judge, the ministers, learned brāhmanas, the purohita and the sabhyas attains heaven. Vide Śukra IV. 5. 5 to the same effect (taking half verses from Yāj. and Kāt.). The king was not to decide by himself but was to follow the advice of his judge, though the responsibility even when he took advice was the king's. Vide Śukra IV. 5. 6 (*naikah patyeca kārūṇi*). Nār. I. 35 says that the king has to abide by the view of the judge (*prāḍvā-kamate sthitah*). This sentiment that it is not safe for a single man, however clever he may be, to undertake to decide a dispute was so ingrained among all people that Kālidāsa gives expression to it in the *Mālavikāgnimitra* (Act I) when he pens the sentence 'sarvajñasyāpyekakino nirṇayābhyupagamo doṣaya'. In *Raghuvamśa* 17.39, Kālidāsa states that king Atithi always looked into the causes of people himself with the help of judges (*dharmaṣṭha*)³⁴⁴. Pītāmaha³⁴⁵ states that a person even if he knows the rules (of dharma) should not give a decision single-handed. Justice was to be dispensed openly in the court and not secretly. Śukra (IV. 5. 6-7) states³⁴⁶ that neither the king nor the judge nor the sabhyas were to hear a cause in secret and that there were five reasons that led to the charge of partiality in judges viz. hot temper, greed, threats, enmity and hearing disputes in private. Judicial action is divisible into two provinces, viz. that of law and that of fact. The latter is a field in which it is impossible to lay down rules for determination. On points of facts there was a vast scope for the king's or judge's discretion. And therefore the texts contented themselves by saying that the king or judge should keep an open or impartial mind, should be free from hot temper or greed, should hear causes under the glare of public view and should not decide at his own will alone but with the help of learned brāhmanas and sabhyas. As regards points of law the king or judge is

344. स धर्मस्थानकः शब्दद्वयित्वार्थिनो रवयम् । इदर्शं संशयच्छेदोऽन्यथा-
नमिद्विः ॥ रघुवंश । 17. 39. The word धर्मस्थ used here for judges may be noted.
Kaut. uses the same word in III. 1. From a detailed examination of the
Raghuvamśa it appears very probable that Kālidāsa had closely studied
Kauṭilya's *Arthasāstra*.

345. तस्मात् वाच्यमेकं विधिज्ञेनापि धर्मतः । इति वितामहेन शक्यं धर्मकथनमि-
वात् । स. वि. p. 67.

346. नैकः पश्येच्च कार्याणि वादिनोः शृणुषाह्वयः । यानि च ह्यः दातुः सभ्याश्च
कदाचन । पक्षपाताधिरोपस्य कारणानि च यच्च वै । रामलोचनचट्टेया वादिनोश्च सहःश्रुतिः ॥
शुक. IV. 5. 6-7.

required to decide according to the rules of dharmaśāstra (Manu VIII. 3., Yaj. II. 1, Nār. I. 37, Śukra IV. 5. 11) and where there are no texts the king should decide in accordance with the recognized custom of the country. Kāt. solemnly warns³⁴⁷ the king against legislating or deciding according to his own will in the face of the texts: 'If a king decides (a case) by his own *fiat* where there is a text (of the śāstra applicable to it) it leads him away from heaven, it causes ruin to the people, it brings danger (to the king) from the armies of his foes and it strikes down the roots of (long) life; therefore a king should decide the causes of people according to the rules of śāstra; but in the absence of smṛti texts he should carry out (judicial administration) according to the usages (lit. the views) of the country'. These are the same as Śukra (V. 5. 10-11). Kāt. further prescribes that the usages established in a country by the approval of its people and that are not in direct conflict with Veda and Smṛtis should be recorded in writing under the seal of the king. Pītāmaha³⁴⁸ quoted by the Sm. C. (II. p. 26) states that in certain cases it is the king's own mind that is the deciding factor.

How the king directly dispensed justice is illustrated by the rules of Gaut. XII. 40-42 and Manu VIII. 314-316 that a thief who has stolen a brāhmana's gold may run with dishevelled hair to the king carrying an iron club or a heavy bludgeon of khadira wood, may declare the sin committed by him and request the king to award punishment, that the king may then strike him with the club and that whether the thief dies or lives after the king so strikes him he becomes free from the guilt. The king was also the highest court of appeal. The Rājatarāṅgiṇī (VI. 14-41) states how king Yaśaskara heard the appeal of a person who had sold his house without the well, who on returning

347. अस्वर्गा लोकनाशाय परानीकमपाह। आयुर्धनहरी राज्ञां सति वाक्ये स्वर्ग-
कृतिः । तस्माच्छास्त्रानुसारेण राजा कार्यणि कारयेत् । वाक्याभावे तु सर्वेषां देशहृदेन तज्ज-
येत् । कात्या. q. by अथर्वक p. 399, स्मृतिच. II. pp. 25-26, परा. मा. III. p. 41.
शुक्र. IV. 5. 10-11 are the same as कात्या. यस्य देशस्य यो धर्मः सदा सार्वकालिकः ।
तस्मिन्मर्यादविरोधेन देशहृदः स जल्पते । देशस्यानुमतेनैव व्यवस्था या निरूपिता । लिखिता तु
सदा धार्म्या मुद्रिता राजमुद्रया । कात्या. q. in स्मृतिच. II. p. 26, परा. मा. III. p. 41.
Vide मनु. 8. 3 for देशहृदः.

348. पत्र चेतं हेतवो न विद्यन्ते तत्र वाधिपयचनाभिर्णव इत्याह स एव (पितामहं
एव) । लेख्यं पत्र न विद्यत न मुक्तिर्न च साक्षिणः । न च विद्यापहारोऽस्ति यनाजं तत्र
वाधिः । निबन्धुं ये न शक्याः स्तुतुर्वाः सन्निवृत्तपिणः । तेषां वृषः नमार्ण इत्याह स सर्वस्य
वधुर्यतः ॥ स्मृतिच. II. p. 26.

from a long absence abroad found the well usurped by the vendee and was defeated in the lower courts because the vendee had bribed the scribe to write 'kūpasahita' instead of 'kūparahita' and how the king decided in the man's favour by exposing the vendee with a trick; while in VL 42-69 the same king is said to have reversed another decision about a contract by a man whose 100 coins had fallen into a well. The same work in another place (IV. 82-108) states how a brāhmana wife appealed to the king of Kashmir to find out the culprit who had murdered her husband in his sleep and how the king by superhuman means held a sorcerer to be the murderer.

When owing to pressure of other weighty business the king cannot attend to the work of administering justice, the king should appoint a learned brāhmana together with three sabhyas to decide the disputes of people. Vide Manu VIII. 9-10, Yāj. II. 3, Kat. 63³⁴⁹ (same as Śukra IV. 5. 12). The qualifications of a judge are set out in many places. Ap.³⁵⁰ Dh. S. II. 11. 29. 5 prescribes that in law-suits judges shall be endowed with learning, good family, and should be old, clever, and careful about dharma. Nār. requires: 'The Judge should be proficient in the texts on the eighteen titles of law, their 8000 sub-heads, in logic (ānvikṣiki) and should be master of the Veda and Smṛtis. Just as a physician takes out from the body an iron dart by the employment of surgical instruments, so a judge should extricate from a law-suit the deceit (underlying it)'.³⁵¹ Kat. says that a judge should be restrained, born of a good family, impartial, not repellent (or harsh in his manners), steady, afraid of the next world, highly religious, assiduous and free from hot temper. A fine enumeration of the qualities required in a judge is given in the ancient drama Mṛcchakatika (IX. 4). Vide Mānasollāsa

349. यदा कुर्यान्न रूपतिः स्वयं कार्यविधिर्नैवम् । तदा तत्र नियुज्यते नाग्र्येण शास-
नपरम् ॥ इति कुलीने मध्यममहोदयकारे विपरम् । परत्र भीक्षु धर्मिष्ठसुखे कोपवर्जितम् ॥
कार्या. quoted in अ. मा. p. 272, स्मृतिच. II. p. 16, राज. र. p. 18 (1st verse),
नित्या on वा. II. 3 (2nd verse), अथवास्तव p. 196, शुक्र IV. 5. 12-13. Same
read दुर्ध कुलीनम्.

350. विवादं विद्याभिजनसम्पन्ना वृद्धा मेधाविनो धर्मविविधातिनः । आप. ध.
II. 11. 29. 5.

351. अष्टादशपदाभिज्ञस्तद्देवादसहस्रविद् । आन्वीक्षिकपादिकुशलः क्षतिरसूति-
परायणः ॥ यथा शल्यं भिषकापादुद्धरेद्यन्त्रयुक्तिभिः । पादोपिषाकस्तथा शल्पमुद्धरेद्यन्त्र-
हारता ॥ नारद प. in स्मृतिच. II. p. 14. The 2nd is नारद (III. 16). It is
quoted as हारीत's in राज. र. p. 12.

II. 2 verses 93-94. A Judge was generally styled *prādvivāka* or sometimes *dharmādhyakṣa* (as in Rāj. R. p. 18),³⁵² or *dharmapraṇāṭr* (Manu VIII. 20) or *dharmādhyakṣin* (as in Mānasollāsa II. 2, verse 93). *Prādvivāka* is an ancient word. It occurs in Gaut. XIII. 26, 27 and 31, Nār.³⁵³ (I. 35), Bṛhaspati (q. by Aparārka p. 602). The word is a combination of '*prād*' (one who puts questions to the suitors, from the root '*pracch*') and '*vivāka*' (who speaks out or analyses the truth, from the root '*vac*' with '*vi*'). The derivation is given by Nār., Bṛhaspati, Kāt. 68 and others. The word '*prāsnavivāka*' (which is quite close to *prādvivāka* in sense and etymology) goes very far into antiquity and occurs in Vaj. S. XXX. 10 and Tai. Br. III. 5. 6. The existence of the word *prādvivāka* as early as Gautama (about 500 B. C.) and of *prāsnavivāka* in the Vaj. S. and Tai. Br. clearly establishes that in ancient India judicial functions became separated very early from executive or political functions.

The chief Judge was preferably to be a learned brāhmaṇa (Manu VIII. 9, Yaj. II. 3). Kāt. (67)³⁵⁴ and Śukra IV. 5. 14 prescribe that, if a learned brāhmaṇa cannot be had for the post of the chief judge, then a kṣatriya or a vaiśya who knows the

352. स्मृतिः । कुलशीलमुपायेतः सत्यधर्मपरायणः । सर्वज्ञः पेशहो दक्षो धर्माध्यक्षो विधीयते । राज. र. p. 18.

353. विवादसंज्ञितं धर्मं वृच्छति गृह्यते मत्तम् । विवेचयति यस्तस्मादाहविवाकस्ततः स्मृतः ॥ नारद उ. in स्मृतिच. II. p. 14; स्पष्टद्वाराभित् मध्ये वृच्छति माहिति स्थितिः । विवेचयति यस्तस्मिन् आहविवाकस्ततः स्मृतः ॥ कात्या. in स्प. मा. p. 274. अपरार्क p. 602 quotes this as from बृहस्पति. The मित्ता on वा. II. 3 derives 'आर्यपर्यधिनी वृच्छतीति माह तपारचने विकृतमविकृतं च सभ्यैः सह विविमक्ति विवेचयति चेति विवाकः । माह त्वासी विवाकश्च माहविवाकः । वृच्छतिरपक्षो वृच्छतीति माह निर्णयं विरोधेन प्रवर्ततीति विवाक इति पौनिकी तत्त्व संज्ञा । माहविवाक इति वृषोद्वारादिवाक्याधुः । स वि. p. 64. Vide अपरार्क p. 602 and राज. र. p. 18 for another verse of बृहस्पति 'विवादे वृच्छति' and मित्ता. on वा. II. 3. and राज. र. p. 19 for a verse of व्यास on the derivation of माहविवाक. Vide शुक्र IV. 5, 66 for the derivation of विवाक from the root विष् or वृष्. मर्यादायै यश्च विवाकः । राज. सं. XXX. 10.

354. ब्राह्मणो यत् न स्वाशु क्षत्रियं तच्च योजयेत् । वैश्यं वा धर्मशास्त्रज्ञं शुद्धं पत्न्येन चर्त्तयेत् ॥ कात्या. q. by मित्ता (on वा. II. 3), अपरार्क p. 601, स्प. मा. 279, राज. र. p. 23, स्मृतिच. II. p. 17. The स्मृतिच. II. p. 17 cites another verse where the first quarter is यच्च विद्यो न विद्वान् स्वात् and the other three are the same as above. शुक्र IV. 5. 14 (यदा विद्यो न विद्वान्) is the same as this. वेदशास्त्र IV. 44 defines ब्राह्मणमुच्यते (which occurs in मनु VIII. 20) 'नर्माधानादिभिर्मन्त्रैर्वेदोपलप्यते च । माध्यापयति मार्गते स मयेद् ब्राह्मणत्वः ॥'. कुल्लूक on मनु. VII. 85 explains यो ब्राह्मणः क्षिप्रारहित आत्मानं ब्राह्मणं जयीति स ब्राह्मणमुच्यते :

dharmaśāstras may be appointed, but the king should carefully avoid appointing a śūdra as a judge. Manu VIII 20 says that the king may prefer a brāhmana who is not learned and maintains himself by the mere fact of his caste, but should never have a śūdra as the expounder of dharma and that the country whose king has a śūdra as judge to expound dharma comes to ruin as a cow sinks in mud. Vyāsa (q. in S. V. p. 65) is to the same effect. Manu (VIII 10-11), Yāj. (II 3), Nār. (III 4) and Śukra IV. 5, 17 state that the king should appoint at least three sabhyas (*puṣṭe* judges or members of the court of justice) to associate with the Chief Judge in the disposal of suits (the idea being that three are the least number of sabhyas to be appointed). Kaut. (III 1) prescribes that the courts called 'dharmaśāhīya' should be manned by three judges called *dharmaśāhīyas* who should possess the qualifications and status of amātyas and that such courts should be established on the borders of the provinces, for a group of ten villages (*saṅgrahāṇa*), for a district (*droṇamukha*, 400 villages) and provinces (*sthānīya*, 800 villages). Bṛhaspati says³⁵⁵ that the sabhyas may be seven, five or three. As in the case of the chief judge, the sabhyas should be preferably brāhmanas, but they may be ksatriyas or vaiśyas. Manu (VIII 11) and Br. say that when in a sabhā three brāhmanas learned in the Vedas sit along with the chief judge appointed by the king that is like the *sabhā* of Brahman or it is like a sacrifice. Yāj. II. 2, Viṣṇudharmaśūtra III. 74, Kāt. 57, Nār. III. 4-5, Śukra IV. 5. 16-17 and others require the following qualifications in the sabhyas: they should be endowed with the study of the Vedas, should know dharmaśāstra, should speak the truth, should be impartial to friend or foe, should be steady, devoted to their work, intelligent, hereditary, proficient³⁵⁶ in arthaśāstra. Impartiality in the king and the judges is insisted on in the texts. Vide Vas. 16. 3-5, Nār. (I. 34, III 5). The king was not to appoint as sabhyas those who were ignorant of the usages of the country, who were atheists and devoid of the study of śāstras, who were either puffed up, hot-tempered, greedy or distressed (Br. q. in Sm. C.

355. लोकवेदाङ्गधर्मज्ञाः सप्त पञ्च त्रयोवि वा । यत्रोपनिष्ठा विनाः स्युः सा पञ्चस-
हस्री सभा ॥ बृहस्पति quoted in स्मृतिच. II. p. 15. It is also शुक्र. IV. 5. 26.

356. स तु सभ्यैः निरैर्बुकाः याज्ञैर्मोहैर्द्विजोत्तमैः । धर्मशास्त्रार्थकुशलैरर्थशास्त्रविशारदैः ॥
कारत्वा. q. by मिता (on वा. II. 2), अथ. मा. p. 278, स्मृतिच. II. p. 15; अहमन्था
धनवन्तश्च धर्मज्ञाः सत्यवादिनः । सर्वशास्त्रप्रवीणाश्च सभ्याः कार्यी द्विजोत्तमाः ॥ कारत्वा. q.
by अपरार्क p. 601, राज. र. p. 23. Vide शान्ति 83.2 for सभ्यसङ्गः.

II. p. 15). The chief justice (*prādivāka*) with the *sabhyas* constituted the Court, being appointed (*niyukta*) by the king. It was stated above that the king was to enter the Hall of Justice with the chief justice, *sabhyas* and *brāhmanas*. The distinction is that *sabhyas* were appointed by the king as judges, while *brāhmanas* were persons who were well-versed in *dharmasāstra*, who could attend the Court, though not appointed (*anīyukta*) and whose opinions on difficult points of law were respectfully received by the judges. They (the learned *brāhmanas*) were in the position of *amicus curiae*. All and sundry were not to intermeddle in trials before the court, but only those who were learned in *dharmasāstra* were allowed to express their opinions on knotty points. Vide³⁵⁷ *Mit. on Yaj.* II. 2. *Manu* VIII. 12-14 (same as *Nār.* III. 8-10 in a different order) say that either a person should not enter a *sabha* or if he enters should say what is proper, that a man remaining silent or declaring what is false becomes a sinner and that, where in spite of the opinion of some or all *sabhyas*, justice is not done by the king, they become participators in the king's guilt. *Kāt.* (74-78) makes it the duty of the *sabhyas* to bring round a king gradually to the right path when the king is about to start on the path of injustice and to state the true decision.³⁵⁸ In the case of the *brāhmanas* their duty ends with stating the rule according to the *sāstras*; they have not, like the *sabhyas*, to prevent the king from doing the wrong thing or to bring him round to the path of right and justice. *Nār.* (III. 1) states elsewhere that one who is not appointed by the king should not interfere by his speech in the decision of a case and that if he does so he would be fined. This applies to the people that are present in the court to see the trial or that accompany the litigants. It has no application to learned *brāhmanas*, who though not appointed by the king, can state their view of the law.³⁵⁹ Vide *Vyavahārasāra* pp. 16-17. *Nār.* III. 17 requires that all the judges of the Court should give a unanimous decision, and that then only the decision leaves no grievance (in the

357. तत्र ब्राह्मणा अनियुक्ताः सभासद्व्युत्थानियुक्ता इति भेदः । मिता, on वा. II. 2.

358. अत्राद्येनापि तं वार्त्तं येष्वप्यनित्यं सभासदः । तेष्वपि वज्रयिनस्तस्माद् बोधनीयाः अनैर्द्वयः । अधर्माय यदा राजा नियुज्यते विवादितान् । विज्ञानं सति सत्यसत्वाकार्यं निर्वर्तयेत् । कात्या. १. in स्मृतिक. II. p. 21, राज. र. pp. 24-25.

359. नियुक्तो बानियुक्तो वा धर्मज्ञो वक्तुमर्हति । दैर्घ्यं वाचं स वदति वा । शास्त्रसुखी भवति । नारद III. 2 (= शुक्र IV. 5. 28.)

mind of the litigants).³⁶⁰ The V. P. (p. 27) states, following Jaimini XII. 2. 22, that the opinion of the majority of *sabhyas* is to prevail.³⁶¹ According to Gaut.³⁶² XI. 25 as interpreted by Aparārka p. 599, if there is a difference of opinion among the judges, the king is to seek the advice of those who are learned in the three Vedas (along with the other *vidyās*) and decide the matter finally. Kat. (58-59) states that the court of justice should have associated with the task of deciding disputes some merchants who belong to a guild; who are men of good family and character, of mature age, endowed with wealth and decent conduct and free from malice. The Mit. and Sm. C. say that this is done to placate the common people in the country.³⁶³ This also shows the growing importance of the moneyed classes and of traders. In the *Mṛcchakatika* a *śreṣṭhīn* and a *kāyastha* are associated with the Judge.

The chief judge and the *sabhyas*³⁶⁴ were not to hold conversation in private with any one of the litigants while the suit was pending and if they did so they were liable to be fined (Kat. 70). Gaut. IV. 9 proscribes fines and even corporal punishments for judges (*dharmaśāstas*) and *pradeśtr*s who corruptly give wrong decisions, cause loss or sentence to corporal punishment. If the *sabhyas*³⁶⁵ give a decision, which is opposed to *smṛti* and usage, through friendship, greed or fear, each was liable to be fined twice as much as the fine to be paid by the defeated party (Yaj. II. 4, Nār. I. 67, Kat. 79-80). The *Viṣṇu Dh. S.* V. 180 and Br. prescribe banishment and forfeiture of all property for

360. यत्र सम्प्रो जनाः सर्वे साध्वेति द्विवि मय्यते । स निःशरणो विवादः स्यात् सशरणः स्यादुल्लेख्यः ॥ नारद (III. 17).

361. संख्यावैक्ये तु पूर्वोक्तविरोधे मूयसां स्यात्सधर्मत्वमिति न्यायेन विदितिसाधयिकसंख्यावचनमादरणीयं सुप्रमाणम् । स्व. म. p. 27. जैमिनि's *śūtra* (XII. 2. 22) is विदितिविद्वधर्माणां समवाये मूयसां स्यात्सधर्मत्वम् ।

362. विमतिपत्तौ जैमिनिवृद्धेभ्यः प्रत्यवहृत्य निर्णयं वमयेत् । मौ. XI. 25; विचार-काणामप्योक्तविमतिपत्तौ वैपिण्यवृद्धेभ्यः समभिगत्यतुर्द्वयविचारधानेभ्यो न्यायं प्रत्यवहृत्यावश्यं व्यवहारं निर्णयं वमयेत् । अपरार्क p. 599.

363. कुलश्रीलघोवृत्तवित्तवृद्धिरमल्लरीः । वणिग्भिः स्यात्कलियपैः कुलभूतैरधिहितम् ॥ अंतारो वणिजस्तत्र कर्तव्या न्यायवृद्धिभिः । कात्या. quoted by मित्र. (on वा. p. 2), स्मृतिच. II. p. 17, परा. मा. III. p. 31, स्व. म. p. 31 (which explains कुलभूतैः ॥ वृद्धैः).

364. अनिर्णीतं तु यद्यर्थं सम्भाषेत ह्योर्ध्वम् । प्राहुर्विवाकोष दण्डवः स्यात्सम्पाधैव विशेषतः ॥ कात्या. q. by अपरार्क p. 604, स्व. मा. p. 283, परा. मा. III. 35.

365. स्नेहावृत्तानतो वापि लोभाद्वा मोहोपि वा । तत्र सम्प्रोऽन्यथावादी दण्ड्योऽस्यः स्मृतौ हि सः ॥ कात्या. q. by अपरार्क p. 603, स्मृतिच. II. p. 22.

sabhyas that give an unjust decision or take bribes. Kat. 81 prescribes that the loss caused by the fault of sabhyas must be made good by them to the losing party, but the decision given by them will stand³⁶⁶. Śukra (IV. 5. 63-64) prescribes the punishment of a thief for a *lekhaṇa* (a scribe) taking down a different deposition from the one actually given or for a sabhya making use of such a deposition knowingly; IV. 5. 93 prescribes fine and removal from office if a sabhya gives a wrong decision through greed &c. and IV. 5. 282 prescribes a fine of 1000 panas against a judge giving a corrupt decision. There must have been a few cases of judges taking bribes in ancient India as in modern times (even Lord Bacon in the 17th century was found guilty of taking bribes as Lord Chancellor and confessed his guilt). In the *Daśakumāracarita*³⁶⁷ (VIII. p. 131) the cynical jester Vihārabhadra says to his king that judges decide matters just as they please after taking bribes and the king thereby incurs infamy and the sin of doing injustice. It was believed that when a just decision was given, the king and the sabhyas became free from sin, the sin reaches him only who is guilty (whether plaintiff or defendant); but where an unjust decision is rendered a quarter of the sin falls on the litigant (plaintiff or defendant) who is guilty of *adharma*, one quarter each on the witnesses, the sabhyas and the king. The Baud. Dh. S. I. 10. 30-31, Manu VIII. 18-19, Nār. (III. 12-13) have the same two verses. The *Vyavaharatattva* (p. 200) says that Hārta also had the same verses. In the *Mattavilāsa-prahasana* (pp. 23-24) reference is made to the giving of bribes to the presiding officers of courts (we should read '*adhikaraṇa-karāṇikānām*' instead of '*—kārāṇikānām*'). Kauṭ. IV. 4 makes it a duty of the *saṁharta* to employ spies in various disguises to test the honesty of judges (*dharmasthās*) and magistrates (*pradeśtrās*) and, if they were found to be ready to succumb to bribes, to order their banishment.

As to *sabhā*, vide pp. 92-93 above. The Nirukta (III. 5) in explaining Rg. I. 124. 7 (*gārtarug-iva samye dhanūnām*) states that *gārtā* means a wooden board or stump in a sabhā on which a sonless widow claiming her husband's wealth had to stand when claiming it.

366. सम्प्रदोषानु वचनं देयं सग्येन तत्तदा । कार्यं तु कारिणामेव निश्चितं न विद्या-
लयेत् ॥ कात्या. q. by स्मृतिच. II. p. 23, म. वि. p. 69.

367. द्वितीयोऽप्यविदुमानां प्रजानामकोशाद् वृद्धमानकर्णः कर्णं जीवति ।
तत्रापि मातृविधवाकृत्यः स्वेच्छया जयपराजयो विदुषाणां पणिसाक्षीत्वा च भर्तारमात्मानं
चार्थैर्षो जयन्ति । दशकुमारचरित VIII. p. 131.

A court of justice was (acc. to Br.³⁶⁸) of four kinds, viz. one established (*pratiṣṭhita*) in a fixed place such as a town, *apraṭiṣṭhita* (not fixed in one place, but moving from place to place as on a circuit), *mudrita* (the court of a judge appointed by the king, who is authorised to use the royal seal), *śāṣita* (or *śāstrita*, acc. to S. V. p. 68 and Par. M. III. p. 24) i. e. the court in which the king himself presides. The Court of justice (in the capital) was to be to the east of the palace as stated by Śaṅkha and Br. (in Sm. C. II. p. 19) and was to face the east. The court-house should be decorated³⁶⁹ with flowers, statues, paintings, idols of gods and should be furnished with incense, throne or seat (for the king or judge), seeds, fire and water (Br. in Sm. C. II. p. 19). The *sabhā* was also called, as stated above, *dharmādhikarāna* or simply *adhikarapa* (in *Mṛcchakaṭika* IX and the *Kādambarī*, para 85) or *dharmasthāna* or *dharmāsana* or *sadaś* (Vas. 16. 2). The *Kādambarī* (para 85) speaks of the royal palace as having a court of justice where the judges (*dharmādhikārins*) sat on high cane seats. The time for holding the court is the morning, acc. to Manu VII. 145, Yaj. I. 327. Kauṭ. states that the king³⁷⁰ should look into the disputes of people in the 2nd part of the day divided into eight parts. The *Dasakumāracarita* (note 367 above) shows the same thing. Kāt. (61-62) prescribes that the time for holding the court as laid down in the *śāstras* is three parts of the day after the first part (when the day is divided into eight parts) i. e. from 7-30 A. M. to noon. There were holidays on which courts were closed i. e. on 8th and 14th *tithis*, Full Moon day and the *amāvāsya* of every month (*Saṁvarta* acc. to Par. M. III. p. 23, *Hārta*, acc. to S. V. p. 72). The *sabhā* is said to have ten *angas*

368. प्रतिष्ठिता दूरे ग्रामे नागग्रामेऽप्रतिष्ठिता । सुविनायकसंयुक्ता राजयुक्ता च शासिता ॥ बृहस्पति q. by अपराक p. 600; राज. र. p. 20 ascribes it to हारीत.

369. मालवपूर्वात्मनोपेता श्रीजगत्पद्मभित्तम् । प्रतिमालेखयुक्तेषु युक्तमण्डपयुक्ता तथा ॥ बृह. in राजधर्मकाण्ड p. 30, स्तुतिच. II, p. 19 and स्प. नि. p. 5. It is probably such a hall decorated with statues and pictures that is referred to in the play *Kundamālā* (p. 10) 'सुसुवित्तव्यः प्रतिमालो महाराजः' (in *Prākṛit*), in which some scholars find a reference to the play called *Pratimā*, one of the *Trivandrum* plays. अधिकरणमण्डपयुक्तापि वैरस्युद्यमेवासनोपविष्टैर्धर्मपैरिव धर्माधिकारिभिर्महाबुद्धैरभिहितम् (राजकुलम्) । कातम्बरी para 85.

370. नाडिकाभिरहरत्तथा राज्ञे च विमजेत् । ... द्वितीये पौरजानपदानां कार्याणि वदयेत् । अर्थशास्त्र I. 19: आचारद्वन्द्वोहनायाद्युर्वर्ध्वं भागवते भवेत् । स कातो भवहारस्य शास्त्रद्वन्द्वो मनीषिभिः ॥ कात्या. q. by अपराक p. 601, स्तुतिच. II, p. 27, स. नि. p. 72.

by Br.³⁷¹ viz. the king, the chief judge appointed by him, the sabhyas, smṛti, gaṇaka (accountant), lekhaka (the scribe), gold, fire, water and *śvapuruṣa* (a bailiff, otherwise called *sādhyapāla*). The chief judge declares (the law), the king awards punishment, the sabhyas examine the dispute, smṛti (dharmasāstra) lays down the rule of decision, the success (of one party or the other) and the punishment; gold and fire are required for taking oaths, the water is for men when they feel thirsty, the gaṇaka counts the wealth or subject matter of dispute, the scribe writes down the pleadings, depositions and the decision, the *puruṣa* summons the sabhyas, the defendant, the witnesses and he guards the complainant and the defendant when they have furnished no surety (for appearance). It is further said that of these ten *angas* (limbs) the king is the head, the judge the mouth &c. Acc. to Br. (q. in Par. M. III. p. 30) and Śukra IV. 5. 43 the accountant and the scribe were to be proficient in grammar, lexicography and counting, were to be pure (in character) and conversant with several alphabets. *Puruṣa* was called *sādhyapāla*, who was to be hereditary, strongly built, a śūdra and obedient to the sabhyas (Vyāsa in Par. M. III. p. 30, V. P. p. 31). The ten *angas* enumerated above (viz. king &c.) are respectively identified with the head, the mouth, the arms, the hands, the thighs (gaṇaka and lekhaka), the two eyes (gold and water), the heart, feet (Br. in V. P. p. 31, Hārta in Rāj. R. p. 20). In the Hall of Justice the king faces the east, the sabhyas, the accountant and the scribe respectively face the north, the west and the south (Br. in Par. M. III. p. 35, Vyavahārasāra p. 25). Omitting the king and the chief judge the *sabha* is said to have eight *angas* in certain works (e. g. S. V. p. 72). The chief justice, the sabhyas and the learned brāhmaṇas were probably elderly people, as great emphasis is laid on this by Nār. (III. 18) and Udyogaparva 35. 58 'that is not a real *sabha* where there are no elderly men &c.'³⁷².

371. *उपाधिकृतमन्वाद्यं स्मृतिर्विण्णवलेखकी । विनामन्वद्वस्वदुग्धाः साधनाद्वानि वै दश ॥ ... यक्षाध्वरो ह्यः शास्ता सत्याः कार्यपरीक्षकाः । स्मृतिर्विनिर्णयं कृते यथदामं दमं तथा । उपधार्थं हिरण्यग्री अम्बु दुषितजलतु । शणको मण्येदुर्ध्वं लिखेन्पुत्रं च लेखकः ।* *आपधिमन्वाद्यमयं साक्षिणं च स्वदुग्धः । ऊर्षादलप्रको रत्नदधिमरपथिनी सदा ॥ इहस्पति q. in अथर्वक p. 600, स्मृतिच. II. p. 20, ब्रा. मा. III. p. 31; राज. र. (pp. 20-21) attributes these to Hārta. Vide Śukra IV. 5. 38-42 for the verses up to लेखकः.*

372. *न सा सभा यत्र न सन्नि इहो इहो न ते ये न वदन्ति धर्मम् । नासौ धर्मो यत्र नो सारपमस्ति न कसरयं यच्छलेनामुविद्धम् ॥ नारद. III. 18 = उद्योगपर्व 35. 58 (reads यच्छलेनामुपेतम्). Acc. to a verse quoted from the राजधर्म by the भाष्य on सत्या. ओ. उ. ३ सभा is of three kinds: समासतो तिस्रो विज्ञेया धर्मस्वेका च कर्मणः । यथा राजसभावेता विज्ञेहिः परिकीर्तिता ॥ The first (धर्मसभा) dealt with स्ववहार and पायजिह, the 2nd (कर्मसभा) was a hall where sacrifices were performed and the 3rd (राजसभा) was the royal *darbar* attended by brāhmaṇas, warriors, royal officers and servants.*

In the drama *Mṛcchakatika* (Act IX) we have a graphic, though brief, description of judicial procedure in ancient India. That drama is at least as old as the 4th or 5th century A. D. It is very instructive to compare the procedure described in it with that gathered from Nār., Br. and Kāt. who constitute the leading triumvirate on law and procedure in the *smṛtis* and who probably flourished a little before and a little after the drama. It will be found on comparison that the procedure in the drama is in essentials the same as that of the three *smṛtis* mentioned above, though there is some difference in minor details. The principal points in the drama bearing on judicial administration may be brought together here at one place. The court house was called 'adhikaraṇa'; the chief judge was called 'adhikarāṇika'; he was assisted by the *śreṣṭhin* (a prominent merchant or banker) and a *kāyastha*; all three are referred to as 'adhikaraṇabhojaka' and are addressed as *adhikṛta* or *niyukta* (appointed by the king); when a despot was on the throne, the judge's position was precarious and he could be deprived of the post at the king's sweet will (the Śākāra, king's brother-in-law, threatens the chief justice with summary dismissal). There was a servant who arranged the seats in the court, inquired whether there was any litigant, summoned Vasantasenā's mother and Cārudatta (this man corresponds to the *puruṣa* or *sādhyapāla*); inquiry was made by the judges as to whether any one wanted to file a suit or complaint; the *śreṣṭhin* and *kāyastha* are asked by the presiding judge to write down the important parts of the complainant's statement; a private person (who was not a relative) could complain to the court about an alleged murder; the judge allowed an old person like the mother of Vasantasenā and a respectable and well-known citizen like Cārudatta to occupy a seat when replying to questions from the court, but Cārudatta was deprived of this concession when a *prima facie* case was made out against him; the court-house (being probably situated near the palace) had near it mantrins, dūtas, spies, an elephant and a horse (and the chief of the city police is asked to ride the horse and find out whether the corpse of a woman lay in the public garden), and *kāyasthas*; Cārudatta was called upon to state the truth and the judge tells him that in the court no trick (*chala*) will be allowed to pass;³⁷³ when a strong case was

373. Compare छलं निरस्य कृतेन व्यवहाराद्यपेक्षया: वाङ्. II. 19; ब्रह्मचर्यानुशा-
सित्वाह विनातिः सद्यदाहकः । नारद I. 29; न तु सिद्धं छलं राजा मयपेक्ष्यमाधनः । कृतमेव
अपेक्षे धर्ममूल पतः शिवः ॥ नारद I. 31.

made out against Cārudatta by circumstantial evidence he was asked to confess his guilt, otherwise he was told that he would be whipped (i.e. this refers to whipping to extort a confession, vide above note 332); the judge was only to pronounce the judgment and recommend the legal punishment, while the king had the last word about the exact punishment; Manu's work was an authority; a brāhmaṇa offender was not to be sentenced to death, but was to be banished with all his wealth, though some kings did not act up to this rule; impalement was carried out by cāṇḍālas; ordeals of fire, water, poison and balance were known and Śūdraka conveys (*viśasāditatūlāgniprārthite me vicāre*) that Cārudatta had prayed for trial by ordeal, but that the chief justice, because there were witnesses and circumstantial evidence, refused that request.

The court so far described (i.e. where the king or the chief justice appointed by him presided) was the highest court. But other tribunals were recognized in the *smṛtis* and digests. Yāj. I. 30 and Nār. (I. 7) state³⁷⁴ that law-suits may be decided by village councils (*kuḷāni*), corporations (*śreṇi*), assemblies (*pūṇa* in Yāj., *gaṇa* in Nār.), the judges appointed by the king and the king himself, each later one being superior to each preceding one. The first three were practically arbitration tribunals like the modern *panchayats*. The several words here require explanation and they have been differently interpreted by different digests. Medhātithi on Manu VIII. 2 explains these words at great length. Acc. to him 'kuḷāni' means 'group of relatives' and also (acc. to some) 'impartial persons' (*madhyasthapuruṣāḥ*) and 'gaṇa' means 'builders of houses and mansions or brāhmaṇas dwelling in maṭhas'. Acc. to the Mīt. and V. P. p. 29 'kuḷāni' means 'an assembly of the relations, agnatic and cognatic, of the litigants'; acc. to the Sm. C. it means 'the agnates of the parties'; acc. to Aparārka it means 'husbandmen'. It appears likely that 'kuḷāni' means officers who presided over a group of eight or ten villages and who were granted the produce of one *kula* of land as their salary. Vide Manu VII. 119 and Kullūka thereon and Dāmodarapur plate of Gupta year 124 in which the head of the district (*viśayapati*) is said to have been assisted by the *nagaraśreṣṭhin*, *prathama-kuḷika* and *prathama-kāyastha* (E. I. 15 p. 130) and

374. कुटुम्बि श्रेण्यश्चैव गणस्याधिकृतो नृपः । प्रविष्टा स्ववहाराणां सुर्वेवस्तुसरो-
चरम् ॥ नारद (I. 7).

'grāmāṣṭa-kulādhikaraṇam' in E. I. vol. 17 p. 345 at p. 348 in the reign of Ku māragupta I. From the Sanchi stone Inscription of Chandragupta II (of the Gupta year 93 i. e. 412-13 A. D.) it appears that *pañchapats* were called 'pañcamandali' (Gupta Inscriptions pp. 29, 31). 'Śreṇi' means, acc. to most commentators, 'the corporation of persons following the same craft or avocation, though they may belong to different castes' such as horse-dealers, betel-leaf sellers, weavers and dealers in hide. Acc. to the V. M. p. 280, 'śreṇi' is an association of artisans or traders'. 'Pūgas' are assemblies of men of one place (a village or a town) belonging to different castes and following different avocations. Kat. (225 and 682) distinguishes between *pana* and *pūga* which he respectively defines as 'assembly of families' (*kulas*) (Sm. C. II. p. 18, Par. M. III. p. 352) and 'assemblies of traders and the like' (V. R. p. 668). V. P. p. 30 says *grāma* and *pūga* are synonyms. The king was thus the highest court of appeal and next to him was the court of the judges appointed by him. Brhaspati (S. B. E. vol. 33 p. 281 verse 28) ordains³⁷⁵ that the *kulas*, *śreṇis* and *ganas* that are well-known to the king may decide the disputes of litigants except those that fall under *sāhasa* and that it was only the king who could carry out the order for fines or corporal punishments, i. e. the arbitration courts could only decide disputes not involving *sāhasa* and they had no power to execute their decrees about fines and corporal punishments, but that their decisions had to be filed with the king, who, if he did not disapprove of them, put them into execution. Pitāmaha³⁷⁶ appears to mention three classes of State courts, while Yaj. and Nār. refer only to two (viz. that of the chief justice and that of the king himself): 'a dispute decided in a village may be taken to the city and one examined in the city (court) to the king; a dispute decided by the king whether correctly or incorrectly cannot be reviewed.' It is distinctly

375. वाङ्मन्यो विद्मन्मन्त्रे विपायसाहसो स्तुतौ । अर्धदण्डवपादुकी राजावसाहभा-
वपि । राजा ये विदिताः सम्पत्कुलभोजिगणादयः । साहसम्पायवर्णानि कुर्षुः कार्याणि ते
क्षणाद् ॥ बृह. in स्मृतिच. II. 20, वरा. मा. III. p. 32, म. वि. p. 68, अप. मा. p. 22.
For the first, vide शुक्र IV. 5. 279 and the second is शुक्र IV. 5. 30 which reads
साहसस्तेष्ववर्णानि.

376. ग्रामे बृहः पुरे पापापुरे ब्रह्म राजनि । राजा ब्रह्मः कुर्वती वा नास्ति तस्य दुष्-
भेदः ॥ वितामह in स्मृतिच. II. p. 19, वरा. मा. III. p. 42.

provided by Br.³⁷⁷ (S. B. E. vol. 33 p. 282 verse 31) that the *sabhyas* are superior to the *kulas* and the rest, the chief justice is superior to *sabhyas* and the king is superior to all. *Pitāmaha*^{377a} provides that when a litigant is not satisfied with the decision given by a *kula* tribunal or the others, he can carry the matter by way of appeal to the king. Besides these courts it appears from Kaṭilya that the village headman (*grāmika* or *grāmakūta*) exercised certain summary powers such as driving out of the village a thief or an adulterer (III. 10) and that he could try some offences (IV. 4, *grāmakūtamadhyakṣam vā sarī brūyāt* &c.). Even in the 20th century in the Bombay Presidency under the Village Police Act (Bombay Act VIII of 1867) the village headman (called Police Patil) has the authority to try and on conviction to punish with confinement for a period not exceeding twenty-four hours any person charged with the commission of petty assault or abuse within the limits of a village and the person convicted has no right of appeal to any court or magistrate against such conviction and only the High Court has the power to entertain a petition for revision (which it hardly ever does). Bhṛgu³⁷⁸ quoted in Sm. C. II. p. 18 and other digests says that there are ten tribunals common to all men viz. the village people, the assembly of the citizens of the capital, *gana*, *śreṇī*, men learned in the four *vedas* (or *śādyās* viz. *śāvikṣiki* and the rest), the *sargins*, *kulas*, *kalikas*, judges (appointed by

377. विचार्य श्रेणिभिः कार्यं कुलैर्पञ्च विचारितम् । सर्वेष्वंशेष्वन्यथा गणाज्ञातं निरुक्तम् ॥ कुलादिभ्योऽधिकः सभासंस्थोऽपक्षोऽधिकः कुतः । सर्वेषामधिको राजा धर्मं बालेन निश्चितम् ॥ बुध. in स्प. य. p. 30. शुक्र IV. 3. 32 has the last verse, the last pāda being धर्माधर्मनिर्णयकः. The स्प. य. p. 30 explains: कुलादीनां ज्ञात्यादिकृतानां वाक्षिण्यादिनाम्नधादृशममनि समाभ्यते ... । अथानाहुदामोवतया ततो बलवत्तरा । पुमान् लोकस्थानवासमाचसम्पत्पेवि मिज्जलितया मिज्जलितया च ततोपि मिथोनपेक्षयाः द्वौवास्याद्वयसम्पत् । नृपाधिकृतानां ततोपि निःसम्पत्तया राजा परीक्षयाधिकृतानां राजभवादि वल्लभदाक्षिण्याधर्मनव इति प्रमेयो बलवत्तरस्य ।

377a. कुलादिभिः कुतः कार्यं विचार्य तद्यथोक्तम् । असन्तुष्टस्य कार्यं गणवाज्ञा कुतः भवेत् ॥ वितानहृ. q. by स्प. नि. p. 15.

378. दश स्थानानि वादूनां पञ्च शेषावधीहृष्टम् । निर्वर्ण्य येन सन्तुजितं विवादे मादय वादिनः ॥ आरण्यस्तु स्वकेः कुतः सार्धिकाः सार्धिकैस्त्वया । सैनिकाः सैनिकैरेव ग्रामेऽप्युपस्थासिनः ॥ उभयादुभयं चैव युद्धे स्थानमाप्सितम् । कुलिकाः सार्धं मुख्याश्च वरधामनिवासिनः ॥ ग्रामपौरगणश्रेण्यभ्यातुर्विद्यश्च वभिणः । कुलानि कुलिकाश्चैव निरुक्तं नृपतिस्तथा ॥ बुध. q. by स्तुतिच. II. p. 18, परा. मा. III. p. 24, स. वि. p. 67 (summary in prose), स्प. य. pp. 8-9. 'कुलिकाः केचनाधिगोत्रा वृद्धाः स्तुतिच.', 'कुलिकाः कुलश्रेणाः' स्प. य. p. 9; 'सार्धिकाः ग्रामवावादी मिलितो जन्मसङ्घः । युद्धया ग्रामगणादयः' परा. मा. III. p. 25; 'सार्धं ग्रामदेववावादी मिलितो जन्मसङ्घः तन्मुख्याः सार्धं गणादयः' परा. मा. p. 9. It should be noted that here कुलानि and कुलिकाः are separate tribunals.

the king) and the king himself. The *varṅins*³⁷⁹ are the groups of various kinds such as *gaṇas*, *pūgas*, *vrātas*, *āreṇis* and others. *Kulikas* may be the elders of the families of the plaintiff and the defendant. In the Dāmodarpur plates (E. I. 15 p. 130) we come across one Dhrtimitra who is described as 'prathamakulika'. The word 'pañcakula' was applied to certain high officers in Gujarat and Kathiawad; vide I. A. vol. 11 p. 220 (Abu Ins. of Bhīmadeva dated Vikrama year 1265) and Tawney's translation of the Prabandha-cintāmaṇi pp. 18, 84, 129, 149, 190 for 'pañca-kula'. The provisions about the conflict between customs and usages on the one hand and *śruti* and *smṛti* on the other will be dealt with in detail later on in another section. A few words may be said here about conflicts between *smṛtis*. In disputes between residents of the same country, the same city or the same hamlet of cowherds or of the same capital or village, the decision should be according to their own conventional usages, but in disputes between these and others (who are not residents of those respective places) the decision must be in accordance with the sacred texts³⁸⁰ (Kat. 47 q. in S. V. p. 72, Par. M. III p. 41). Another rule is that when there is an apparent conflict between two *smṛtis*, reasoning is to decide in ordinary life which should be followed or reasoning based on the actions of the aged and the experienced is to decide what text to follow (Yāj. II. 21) and the business of the interpreter consists in holding that one of the *smṛtis* contains a general rule and the other an exception or that the two apply to different sets of circumstances (*viśaya-vyavasthā*) or that an option may be intended. Voluminous glosses have been written on this one text of Yāj. II. 21 right from Viśvarūpa in the 9th century downwards. Another rule is that in the administration of justice dharmaśāstra rules have superior force to those of arthaśāstra. This has been already referred to above (p. 9). Bhṛgu further provides that foresters may get their disputes settled by foresters, members of caravans by other members, soldiers by (a tribunal of) soldiers and those who stay in a village as well as in a forest may get their disputes settled either by villagers or by foresters by mutual

379. मणः पाण्डुरपुमाश्च ज्ञाताश्च श्रेयवस्तथा । समूहपाण्डु ये चान्दे इवर्त्तमानास्ते
बृहस्पतिः ॥ कात्या. q. by स्मृतिच. II. p. 18, स. वि. p. 67; यामाण्यमेव ये वेदे न वदन्ति
कुटुम्बः । तेषां बीजज्ञानेन स्त्रीनां पाण्डुराख्या यजतिर्वेदे ॥ वद्विज्ञानमत q. by मय. वि. p. 13.

380. वैशम्पयनयोगेऽपु बृहस्पतेषु वादिनाम् । तेषां स्वसमवेधमहात्मनोऽप्युचैः सह ॥
कात्या. q. by परा. मा. III. p. 41, स. वि. p. 72. स्मृतिच. II. p. 26 appears to
ascribe it to विश्वामह.

agreement and that the five tribunals for foresters and others are *kulikas* (high officers or heads of families), *sārthas* (members of caravans), headmen, villagers, citizens. The texts further provide that in certain cases the court was to call in aid outsiders to help in deciding disputes. Vyāsa³⁸¹ says: 'In the case of disputes among traders, artisans, husbandmen and actors it is impossible for others to give a (correct) decision; hence such matters should be got decided by experts in those various matters'. Br. states that in disputes among husbandmen, craftsmen (carpenters and the like), artisans (like painters), money-lenders, guilds, dancers, sectarians (like Pāsupatas) and criminal tribes the decision should be made with the help of those who understand the conventions made by them and their usages. In disputes about the boundaries of villages and about fields in a village, four, eight or ten neighbours were to settle the boundaries (vide Manu VIII. 258, Kaut. III. 9, Yaj. II. 150-152). Kaut. 1. 19 and Br.³⁸² (q. in V. P. p. 23) say that disputes between those who have performed austerities or between those who are adepts in witchcraft and Yoga should not be decided by the king (unaided), but with the help of those learned in the three Vedas, as otherwise they may feel offended. These quotations show that certain people could claim to be tried by their peers or at least by a jury. This jury system was resorted to for settling complicated questions of fact. It is a very ancient system, being mentioned even by Gautama³⁸³ XI. 21-22 'the king, having received help from the heads of husbandmen, merchants, cowherds, money-lenders and artisans as regards disputes in their own groups, should finally decide what is just'.

It has already been stated above that the king is to decide according to the *smṛtis*. He has also to take into consideration the duties and usages of the several *varṇas* and the eighteen low

381. वणिक्कसिन्धिमन्त्रिषु कुपरिहोपजीविषु । अशक्यो निर्णयो अन्यैस्तदीवैव कारयेत् ॥ व्यास quoted in परा मा. III. p. 42. स्प. प. p. 23; कीमाशाः कायकाः सिन्धिकुसीदिभ्रेजिमतैः । लिङ्गिनस्तैः कुर्युः स्वेन धर्मो निर्णयम् ॥ बृहस्पति, quoted in स्प. प. p. 23. This is सुक IV. 5, 18.

382. तपस्विनां तु कार्याणि त्रैविध्यैः सह कारयेत् । साधकयोगविदो चैव न स्वयं कोप-कारण्यात् ॥ कौटिल्य I. 19 towards end. बृह. in स्प. प. p. 23. स्प. मा. p. 281 ascribes it to both बृह. and कात्या.

383. कर्षक-वणिक्-पशुपाल-कुसीदि-कारकाः स्वे स्वे धर्मैः । तेष्वो न्यायाधिकारमर्थाभ्यारप-यन्तुव प्रसीयवन्तः । मी. XI. 21-22.

castes³⁸⁴ (acc. to Manu VIII. 41 and Hārta). The eighteen low castes said to be outside the pale of the four varnas and āśramas are enumerated by Pitāmaha, viz. washerman, shoe-maker, nata (dancer caste), bamboo-worker, fisherman, mleccha, bhilla, ābhira, māṅga and nine others (the names of which are not given here as the text is corrupt).

The foregoing gradations of tribunals did not all exist at all times in ancient and medieval India. One thing is, however, quite clear. There was always a court of the Chief Justice appointed by the ruling power and final appeal lay to the ruler himself. But as regards inferior tribunals usage varied. For example, it appears from a decision of 1742 in which a ruling of king Shivaji about a Kulkarni *watan* is set out that in Shivaji's time disputes could be taken before three different but inferior tribunals, viz. the *got* (i. e. the assembly of castemen) which is somewhat like the *kula* tribunal of the smritis, or before arbitrators hailing from a place other than where the dispute took place or before the officers, *balutedars* and chief men of several villages round about.³⁸⁵

Manu (VIII. 23) prescribes that the king fully dressed and with an undisturbed mind, after taking his seat in the Hall of Justice, should perform obeisance to the gods, the guardians of the (eight) quarters (Indra and others, as specified in Manu VII. 4) and should then commence the work of looking into the legal business. The transaction of legal business has four stages (from the king's or judge's point of view) viz. first receiving information from a person, then finding out under what title of law (vyavahārapada) the information falls, then consideration of the pleadings of the parties and the evidence

384. शास्त्राणि वर्णधर्मास्तु मनुजीनां च धृतिः । व्यवहारस्थकं च ज्ञात्वा तत्सर्वमाचरेत् । हारीनो न स्मृतिचः II. p. 29, परा. मा. III. p. 46, स. वि. p. 74 । मनुजयः पितृमहान् धृतिताः । राजकर्मकारश्च सरो वृद्ध एव च । कैवल्यश्च विज्ञेयो म्लेच्छभिर्होतव्यश्च । ... एताः मनुजयः योका अष्टादश समीपिभिः । वर्षानामाभमाणां च सर्वदा तु धृतिः स्थिताः । स्मृतिचः II. p. 29, परा. मा. III. p. 46.

385. Vide 'Vatapatreṁ, Nivādapatreṁ' edited by Messrs Mavji an Paraṇia (1909 A. D.) in Marathi p. 12 at p. 15 'सदरहू घोषांच्या तक्रिरेस मनास आणून घोषा वादिपदांस मंडवले कीं सुमो मोवास राजी असात तर मोवास पाठवू अगर परस्पदास राजी असात तर परस्पदास पाठवू अगर हमशाई मारीचे मोकदम व मोखेसर व मोजे मजकूरचे मोकदम व बारा वहुने वासी राजी असात तर खावे मोहिबकान ममसुकी कसन जे मोही सुमवास मानली ते समजे.'

led by them and lastly the decision.³⁸⁶ When a litigant comes before the court at a proper time (i.e. when the court is sitting) and makes his bow, he (the king or judge) should³⁸⁷ address him as follows:—"What is your business? What is the injury done to you? Don't be afraid, speak out, man! By whom, when, where and why (was the injury caused)? When thus asked whatever he replies should be considered by (the judge) with the *sabhyas* and *brāhmanas* and if the matter be legally entertainable he (the judge) should deliver the seal (sealed order) to the plaintiff or order the bailiff to summon (the defendant)". These observations are made by *Kat.* (86-88). Whatever a man, being excited by one of the emotions of love (or anger or greed), says before the court, should be first written down on a board or the like by the scribe (*Nār.*³⁸⁸ II. 18).

Very elaborate rules are laid down about the summoning of the defendant or accused by *Nār.* (I. 52-54), *Bṛ. Kat.* (96-100), *Sūkra* (IV. 5-102-106) and others. A few of the rules are set out below. The first person to be summoned is the one against whom a complaint based on suspicion or truth is made by the plaintiff or complainant. But other persons may be called as defendants³⁸⁹ either when the person proceeded against by the plaintiff puts forward another as liable to plaintiff's claim or makes another liable along with himself or when another person is accepted by the plaintiff (on behalf of another who is a minor &c.) or (acc. to the *Madanaratna*) another person himself comes forward (as defendant). The king should not require the personal appearance of the following persons: the diseased, minors, very old (beyond 70), one in a calamity, one engaged in some

386. आचम्यः प्रथमं कार्यं व्यवहारपूर्वं ततः । चिकित्सा निर्णयश्च दर्शनं स्थापयितुं विधम् ॥ नारद (I. 36). For explanation, vide स्मृतिच. II. p. 29, स. वि. p. 75.

387. काले कार्यार्थिनं वृत्तेऽन्यत्तं पुरतः स्थितम् । किं कार्यं का च ते पीडा ना भेदी-
र्भं हि मानव ॥ केन कस्मिन्पक्षे कस्माच्छब्देन सभावतम् । एवं पृष्टः स पश्यन्पातु तत्सम्पे-
न्नोद्यते स ह । विदुष्य कार्यं न्यारब्धं चेदाह्वानार्थमथ परम् । सुदृशं वा निक्षिपेत्कस्मिन्पक्षे वा
समादिशेत् ॥ कात्या. q. by मित्र. on वा. II. 5, परा. मा. III. 52 and 55, स्मृतिच. II. pp. 31, 32. The words किं कार्यं refer to a civil dispute and का च ते पीडा to a criminal dispute (हिंसामुह).

388. रामादीनां पदेन कोपितः कर्णे वदेत् । तदादी त लिखेत्तर्कं वादिना कल-
कादिषु ॥ नारद (II. 18).

389. अधिकारोऽभिवृत्तस्य जेतरस्यासक्तसङ्गतेः । ह्यरोऽप्यभिवृत्तेन प्रतिरोधीकृतो मतः ।
समर्पितोऽर्थेना योग्यः परो धर्माधिकारिणि । प्रतिवादी स विज्ञेयः प्रतिपक्षश्च नः स्वयम् ॥
कात्या. quoted by अपराज् p. 639 (reads माहतोऽधिकृतो मतः), स्मृतिच. II. p. 32, स. वि. p. 30.

religious rite, one who would suffer irreparable loss by coming, one in misfortune (such as the death or disappearance of a dear relative), one engaged in the king's business or in a (religious) festival, one intoxicated, a lunatic, one distressed, a servant, a woman³⁹⁰ who is young and whose family is in straitened circumstances or who is of good family or who is recently delivered, a maiden who is of a higher caste than that of the complainant. Nār. (I. 53) prescribes that cowherds when it is the season for taking cows for grazing, agriculturists in the sowing season, artisans actually engaged in work and soldiers engaged³⁹¹ in war should not be summoned to appear in person, while so engaged. In these cases some one on their behalf should be summoned as a representative. But it is provided that even these persons may be summoned with proper safeguards in important cases or grave charges, such as the killing of human beings, theft, rape, eating forbidden food, counterfeiting coins, high treason &c. But women who by their earnings support their families, unchaste women, prostitutes, women without family and women excommunicated for grave sins may be summoned to appear personally³⁹². A person who is summoned and is able to appear but does not appear in person was to be fined according to the value or importance of the subject matter of dispute e. g. in slight causes fifty (copper) panas, two hundred at least in the cases of middling value and 500 panas at least in heavy causes (vide Kāt. 100-101 quoted by Sm. C. II. p. 34, Aparārka p. 607.) After taking the fine and waiting for 30 days or a month and a half the king may give a judgment in favour of the plaintiff, due to defendant's default. But if the defendant does come after that time, the suit may be restored and proceeded with.³⁹³ But when there is an invasion by an enemy or a famine or an epidemic or disease the king should not impose a fine, but send a second summons. In the case of those who are exempted from personal appearance (as above) their relatives (son, father &c.) or some other person

390. Compare sec. 132 of the Indian Civil Pro. Code (Act V of 1908) for exemption of certain women from personal appearance.

390 a. Compare the Indian Soldiers (Litigation) Act (IV of 1925).

391. Vide Mit. on Yāj. II. 3 (for quotations about most of these rules), Aparārka p. 600, Par. M. III. p. 51, Vyavahāra-mayūkha pp. 9-10.

392. एवं दण्डमादाय विप्रसादाद्वाह्यं विप्रसादाद्वशमन्यार्थं (विप्रसादाद्वा दण्डमन्यं?) दण्डेति वा शान्तिनिमित्तजपपत्रं दद्यात् । एवं कृते यदि मतिवाधामण्डलि दुनरपि व्यवहारद्वयं कर्तव्यमिति । द. नि. p. 29.

appointed by them (such as a pupil, servant &c.) or one who can be recognised as their agent may be allowed to appear.^{392a} But no representative was allowed in serious charges cited above (vide Kat. 93-95 q. by Aparārka p. 639, Sm. C. II. p. 34). If a father, brother, a friend, or a relative appears before the court for the real litigant, the law-suit may be proceeded with (Pitāmaha). Whoever carries on anything through another by appointing him to that task should be understood to have done it himself and the business transacted by such a representative or agent cannot be annulled. If a person who is not a brother nor father nor son nor appointed to represent another prosecutes a law-suit for another, he is liable to be fined³⁹³. As the king was supposed to be the guardian of a minor's wealth, it appears from this that a king could have appointed a guardian for the suit when a minor was concerned. The above provisions show that maintenance and champerty were not encouraged by ancient Hindu lawyers.

An interesting question arises whether lawyers as an institution existed in ancient India. The answer must be that so far as the smṛtis are concerned, there is nothing to show that any class of persons whose profession was the same as that of modern counsel, solicitors or legal practitioners and who were regulated by the State existed. This does not preclude the idea that persons well-versed in the law of the smṛtis and the procedure of the courts were appointed (*nigūṭa*) to represent a party and place his case before the court. The procedure prescribed by Nār. Br. and Kat. reaches a very high level of technicalities and skilled help must often have been required in litigation. In the com. of Asahāya as edited by Kalyāṇabhaṭṭa on Nār. (rūādāna 4) there is an instructive story from which it appears that persons who had studied the smṛtis helped parties in return for a monetary consideration to raise contentions

392a. कुलस्त्रीपालकोन्मत्तजहातां च बान्धवाः । पूर्ववाद्योचरे कुर्वन्निपुको भूतक-
स्तथा = q. by विवादचन्द्र p. 89, द्यम. द. p. 201; अग्रमत्तजहातां कुलस्त्रीपालरेनिनाम् ।
पूर्वोत्तरे वदेद्दुष्पुनियुक्तोऽन्धोधा नरः । इह स्वपति q. by स्मृतिच. II. p. 33, द्य. द.
p. 40; दाताः कर्मकराः शिष्या निपुका बान्धवास्तथा । वादिनो न च दण्ड्याः स्तुर्पसव-
नोऽप्यः स दण्डमाह = कात्या. quoted by अपरार्क p. 639.

393. पिता भ्राता सुहृदादि बन्धुः सम्बन्धिनोपि वा । यदि कुर्वन्परश्वानं वादं तत्र
प्रथमयेत् = यः कश्चित्कारपेक्षिबिचित्रोपायेन केनचित् । तस्मै च कुर्वन् जेयमनिवर्त्य हि तत्
स्तुतम् = पितानह in स्मृतिच. II. p. 32; these are सूत्र IV. 5. 112-113; यो परश्वानं
विषयते तपोर्जयपराजयो । यो न भ्राता न च पिता न पुत्रो न निधोगहन् । परार्थवादी दण्ड्यः
स्याद् दण्ड्यहारेपि विमुक्तः = नारद (II. 22-23). This is सूत्र IV. 5. 118.

before the court. But there also the helper comes forward saying that he is a very old friend of the family and has been appointed by the party to represent him. So he corresponded to what is called a recognized agent in the Indian Civil Pro-Code, Order III r. 2 (Act V of 1908). In Sukra IV. 5. 114-117 some important rules are given:³⁹⁴ the person who is appointed to represent a party should get as his wages 1/16, 1/20, 1/40, 1/80 or 1/160 part of the amount in dispute, that the wages become less and less as the claim in dispute becomes higher or if several persons employ one representative; one who knows *dharmasāstra* and the procedure of law-suits should be appointed as representative and not any one who is deficient in these; if the representative takes wages without knowing these he should be punished by the king. A representative is to be appointed by the party and not by the king at his will; if the representative allows the matter entrusted to him to fail owing to his greed he is liable to be fined³⁹⁵. In the 'Questions of Milinda' (S. B.

394. निधोमि (नि!) तस्यापि भूतिं विवादाद् बोद्धव्यमिति । विवादांशं तदर्थं वा तदर्थं च तदधिकारम् । एषा व्यापारिकं कार्यं हीना हीना भूतिस्तथा । यदि बहुनिधोमी स्वाध्यायया तस्य पोषणम् । धर्मज्ञो व्यवहारज्ञो निधोक्तयोऽप्यथा न हि । अन्वया भूतिं यद्वर्त्तन् दण्डयेन्न निधोगिनम् । कार्यो निधो निधोमी न सूयेन स्वमनीषया । सोमेन स्वन्वया कुर्वन् निधोमी दण्डमर्हति । सुक्र IV. 5. 114-117. The words भूतिं यद्वर्त्तन् present a difficulty. Probably there is a compound of भूति with यद्वर्त्तन्.

395. The story in the com. on Nār. is as follows: In Pātāliputra (modern Patnā) a brāhmana named Śrīdhara acquired with great trouble a fortune and lent to a trader named Devadhara ten thousand *drammas* at the rate of 2 per cent per month. When one month passed Devadhara paid an interest 200 *drammas*. When the 2nd month was running, Devadhara died of high fever, his son died of cholera and only the great-grandson of Devadhara, by name Mahidhara, remained. He was a very young man addicted to gambling and other vices. His property was taken under their protection by his maternal uncles. They were advised by a brāhmana who had a smattering of smṛti lore and was called Smārtadurdhara 'Don't pay even a rupee to the creditor Śrīdhara. I shall save you even in Court by citing appropriate texts.' The uncles replied 'if you save us, we shall give you a thousand *drammas* as a reward'. When the 2nd month passed (from the date of borrowing), Śrīdhara called upon the uncles to pay 200 *drammas* as interest for the 2nd month. They replied 'You cannot claim even the principal (from the great-grandson of the original borrower), much less interest'. Smārtadurdhara, the legal adviser of the uncles, said "Nārada declares (rāḍāna +) 'grandsons should pay the debts of the grandfather; that (debt) ceases from the fourth'. On hearing this Śrīdhara was stunned, but gathering his wits filed a suit in the court and had summonses issued

(Continued on the next page)

E. vol. 36 p. 238) there is a passage about certain *bhikkhus* in the 'city of Righteousness' (*dhammanagara*) who are styled 'dhammāpanikas' (dealers in dharma) and are described as follows: '(Bhikkhus), who in the spirit and the letter, in its arguments and explanations, its reasons and examples teach and repeat, utter forth and recapitulate the ninefold word of the Buddha; such bhikkhus are called, O king, lawyers in the blessed one's city of Righteousness' and on p. 239 there are 'dhammasettḥino' (bankers of dharma), which word reminds us of the *śreṣṭhin* in the *Mṛcchakatika*. The dhammāpanikas probably correspond to such lawyers as *Smārtadurdhara* mentioned above. The rules of *Sukra* make a near approach to the modern institution of the Bar and the fees prescribed by *Sukra* are similar to those allowed by the Bombay Regulation II of 1827 and by Schedule III to the Bombay Pleaders' Act (Bombay Act XVII of 1920). The first legislative enactment in India to deal with lawyers for representing parties passed by the British Government was the Bengal Regulation VII of 1793 which defined the privileges, the fees (five per cent up to 1000 and then on a sliding scale) and responsibilities of *vakeels* (which word originally means 'agent').

The plaintiff may put under restraint till the approach of the summoner (the bailiff) by the king's order the defendant, who does not stand up to meet the claim (i. e. is about to abscond or may abscond) that is to be investigated (or when the plaintiff spoke to him about the claim before coming to court) and

(Continued from the last page)

to Mahidhara, great-grandson of Devadhara, and his uncles. Sureties were taken from both sides. The uncles were asked (by the court) 'why don't you pay the interest to Śridhara?' They appointed as their representative *Smārtadurdhara*, who said that he and his ancestors were friends of the family of Mahidhara and so he addressed the court 'I rely on Nārada's words (quoted above), and Mahidhara being the fourth from Devadhara (including the latter) is not liable to pay'. Bhaṭṭa *Smārtasekhara* laughed at this and said '*Smārtadurdhara*, you are not deeply learned in the *smṛti* texts nor have you studied glosses thereon. The whole of the debt of 10000 dramma lent by Śridhara is still due from Mahidhara, as he is the great-grandson of the borrower, as three male descendants of the borrower are liable to pay the ancestor's debt and as Nārada means only this that the son of the great-grandson (who is the fourth from the borrower, excluding the latter from computation) is not liable to pay the debt of his great-grand-father' and the learned speaker charged him with having been promised a gratification. *Smārtadurdhara* and his proteges lost the case.

who disregards the words of the claimant. This is called *āsedha* which is explained by the Mīt. on Yāj. II. 5 as restraint under the king's order. It is of four kinds viz. restraint as to (*sthāna*) place (e. g. you are not to go elsewhere from your house or a temple), as to time (e. g. you must present yourself on the 5th of a certain month), restraint from going on (*pravāsa*) a journey (till the suit is decided) and restraint from doing certain actions (e. g. you are not to sell certain property or to plough a certain field till the disposal of the suit)³⁹⁶. The rules about *āsedha* are laid down by Nār. (I. 47-54), Br. (q. by V. P. p. 42, Sm. C. II. pp. 30-31), Kāt. 103-110 (all quoted by V. P. pp. 41-42, Sm. C. II. pp. 30-31). Nār. (I. 54) states that those persons whose personal appearance is dispensed with as stated above are not to be subjected to *āsedha*. Nārada provides that he who disregards the prohibitory order (*āsedha*) of the court should be punished and that he who obtains a restraint order against a person that should not have been thus proceeded against should also be punished. Acc. to Kāt. that man who restrains the defendant so as to prevent him from exercising his limbs or from talking or breathing freely should be punished and not the defendant if he breaks such restraint. A defendant would not be liable to be fined, if he disregards a restraint order which ties him down to a river ford, or to a forest, to a bad place (infested by thieves and tigers) or at the time of an invasion (Nār. I. 49). There is a provision which looks like one for the appointment of a Receiver in modern times. Kāt. (120) says 'A king should not allow a litigant to proceed if the litigant retains the property or money which he has (been shown to have) seized; it should be delivered over to the opposing litigant (if he be trustworthy) or it may be kept with a third person (as receiver for the successful party)³⁹⁷. When the defendant comes on being summoned, he and the plaintiff are both to be placed before the judges (Pitāmaha q. in Sm. C. II. p. 34). Then a surety is to be taken from both who would be capable of carrying

396. It should be noted that these provisions about *āsedha* are analogous to those about attachment or arrest before judgment (section 94 and Order 38 of the Indian Civil Pro. Code of 1908) and temporary injunction (Order 39 of the same).

397. सुहीतग्रहणो रथापो न प्रक्षयं गृहीतुता । तस्य वा तत्समस्यै रथाप्याप्यं वापि परस्मै तत् । कात्या. q. in स्मृतिच. II. 5. 35, विवादचन्द्र p. 94, which explains 'अयिना परमार्थिसकाशावेष्टिवादप्रमाणीयते तदा यावत्परमार्थिनि मध्यस्थे वा न समस्यते तावद्विवादो न ज्ञेयः । सुहीतः । एकान्ते इति ग्रहणे विवादपूर्वं तद्वृत्तिर्लभ्य न सुहीतग्रहणः । तस्य परमार्थिना कुले (वस्ते ?) तत्समस्यै परस्मै मरुत्स्थस्य स्थाने वा रथाप्याप्यमर्थः'.

out the decree made by the court i. e. who would be able to pay the amount of fine to the king if the defendant denied the plaintiff's claim or who would be able to pay double the amount of the claim if the plaintiff's claim be found to be false (Yāj. II. 10-11). If any one of the parties cannot offer a surety, then he has to be kept in the custody of the court's bailiff (*sādhyapāla*) and has to pay the daily wages of the bailiff at the end of every 3rd day (Kāt. 117 q. by Mit. on Yāj. II. 10). The following persons could not be accepted as sureties (Kāt. 114-116 q. by Mit. on Yāj. II. 57): 'the master (in the case of a party being a servant), an enemy, one authorised by the master, one arrested, one fined, one accused of grave sins or offences, one who is a co-sharer in family property, a friend, one who is a perpetual student, one who is appointed to do the king's business, ascetics, one who would not be able to pay the amount decreed and the fine to the king, one whose father is living, one who incites the party for whom surety is demanded, one whose antecedents are unknown.' When a person (of any caste) is kept guarded for want of a surety he is not to be prevented from doing necessary and obligatory acts (bath, *sandhyā* worship &c.) and if he runs away from the guard he should be fined eight *paṇas* (Kāt. 119 q. in Par. M. III. 58).

When the defendant comes before the court, the information at first given by the plaintiff is to be written down accurately in his presence together with the year, month, fortnight, day, names (of parties), caste &c. (Yāj. II. 6). When the aggrieved party first comes to the court, all that is taken down is the matter in dispute (i. e. the draft of the plaint); when the defendant comes, the plaint is written down with all details (including the grievance as stated in the beginning).³⁹⁸ The plaint is called by various names in Sanskrit viz. *pakṣa*, *bhūṣā*, *pratijñā* (Mit. on Yāj. II. 6). Sometimes the word '*pūrvapakṣa*' is used for *pakṣa* (as in Kāt. 131, Nār. II. 1). *Vādin* and *prativādin* generally mean the plaintiff and the defendant, though *vādin* sometimes means 'a litigant' (either the plaintiff or defendant). '*Arthin*' (one who seeks the assistance of the court) and *abhiyoktṛ* (attacker) are synonyms of *vādin*; and *pratyarthin* and *abhiyukta* (attacked) are synonyms of *prativādin*. Kāt.

398. अथ चेत्प्रतिभूतमस्ति कार्यपोषयस्तु वादिनः । स रक्षितो दिनस्यान्ते दद्याद्द्वयप्राप वेतनम् ॥ कात्या. quoted by मित्रा. on वा. II. 10 and V. P. p. 44.

399. आयेद्वनममये कार्यमायं लिखितं यथार्थिनोऽप्यतः समामासादिविदिशं लिखते इति विशेषः । भाषा पण्डिता वक्ष इति नार्थमस्ति । मित्रा. on वा. II. 6.

(130-131) says that the judge⁴⁰⁰ should have the plaint written down on a board (or on the ground) with a piece of chalk as narrated naturally by the claimant and then on a leaf (palm leaf or bark or paper) when it is corrected (after the defendant appears) and that the plaintiff may delete some matters from the original (draft of) plaint and may fill in gaps and that such amendments may be made in the draft till the plaint is finally settled.⁴⁰¹ It appears from the Vyavahāratattva (p. 205) that the pleadings (the plaint and the reply) could be written down in Sanskrit or in the vernacular of the parties if they were ignorant. The Mṛcchakatika (Act IX) shows how the presiding judge asks the śreṣṭhin and kāyastha to write down the words 'not by me' as the complaint of the Śākara when the latter averred that Vasantasena was killed by Cārudatta and not by himself. The plaint could be amended till the filing of the reply⁴⁰² (Nār. II. 7). Elaborate rules are laid down about the contents of the plaint by many writers from Kautilya (III. 1) downwards. Kauṭ.⁴⁰³ states that in the plaint should be entered the year, season, month, fortnight, day, the documents (to be relied upon), the court (in which the plaint is lodged), the (amount of) debt (or other money due) and the country, village, caste, family, names and occupations of the plaintiff and defendant together with the relationship in which they stood to each other. Kat. (127-128 q. by Mīt. on Yāj. II. 6 and Aparārka p. 608) requires that in suits about immoveable property, ten details should be recorded in the plaint viz. the country, the place (town or village in which the property is situated), situation (boundaries or the figure such as a square &c.), the caste (of both parties), names,

400. अधिकान् शोधयेद्भोजन्यान्व पतिपुरयेत् । धूमौ निवेशयेत्तावद्यावत् पक्षः पलित्विः । पूर्वपक्षं स्वभावोक्तं प्राद्विवाकोऽभिलेखयेत् । पाण्डुलेखेन कलके ततः पक्षे विशेषितम् कारयत् । q. the first by विन्ध्य on वा. II. 6, the 2nd. by मिता on वा. II. 6 and both by अपराज्ज p. 611, परा. मा. III. pp. 65-67.

401. शोधयेत्पूर्ववत् तं पावकोत्तरदर्शनम् । अवहन्धयोऽन्तरेण निवृत्तं शोधनं भवेत् । वारद्व. q. by मिता on वा. II. 6: एतच्च संस्कृतदेशमाश्रम्यतरेण यथाभावे वक्तव्यं लेखयेत् । मुख्यानिमिदि वाद्विपतिवादितादर्शनात् । अत एवाव्यापनेति तथोक्तं विष्णुधर्मोत्तरे । संस्कृतेः पाकृतैर्वाक्यैः शिष्यमनुकृतः । देशमाश्रयाप्यैव बोधयेत्स गुरुः स्मृतः । स्पष्टाहारात् p. 205.

402. Under the Civil-Pro. Code, Order VI. r. 17 (Act V of 1908) the plaint may be allowed to be amended at any stage of the suit. The ancient Indian rule was somewhat stricter.

403. संवत्सरपुत्रु मासे पक्षं दिवसे करणमधिकरणसूत्रं वेदकापेदकयोः कृतसमर्था-वस्थापितैः सहासमजालिना वनामकमणि आभिलेख्य वाद्विपतिवादिप्रमाणानुपूर्वाखिवेशयत् । अवशाच्च III. 1.

the dwelling place (of the parties), the measure (so many *nicartanas* &c.), the name of the field, (names of) the father, grandfather and great-grand-father, mention of the former kings. Kāt. 124-126, Br. (q. in Sm. C. p. 36 and V. M. p. 294) give further details, which are passed over for want of space. All the details enumerated above need not occur in every plaint, but the necessary ones must be stated according to the facts of each case⁴⁰⁴.

These rules about the contents of plaints are very similar to those in the Indian Civil Pro. Code, Order VII rules 1-5.

In modern India no suit or appeal can be filed unless the plaintiff or appellant pays substantial court-fees (Rs. 7½ per cent upto Rs. 1000 and 5 per cent for higher claims up to 5000 and so on at reduced rates as the claim rises). It is interesting to see how the litigants in ancient India fared in this respect. It appears that in disputes of a criminal nature no court fees had to be paid in ancient India. The person found guilty had to pay to the king the fine declared in the Smṛtis for offences or awarded by the Court. As regards civil disputes also nothing had to be paid at the inception of the suit. Certain rules are prescribed by Kaut. (III. 1), Yāj., Viṣṇudharmasūtra, Nār. and others about payments to the king after the suit is decided, which payments may be regarded as in the nature of court fees. Yāj. II. 42 and Viṣṇudharmasūtra VI. 20-21 state that in the case of suits for the recovery of debts the debtor who admitted that he was a debtor (but did not pay the creditor) should be made to pay to the king 10 per cent on the amount decreed and the successful creditor should pay five per cent out of the amount decreed (as *bhṛti*, compensation or court fee)⁴⁰⁵. When the debtor denies the fact of debt altogether and the creditor succeeds in establishing it, the debtor had to pay the amount decreed to the creditor and an equal amount to the king as fine; but if the plaintiff turns out to be a false claimant (i. e. the relationship and the amount of the debt are not proved) he had to pay to the king as fine twice as much as the amount claimed by him (Yāj. II. 11). Nār. also (IV. 132) says⁴⁰⁶ that a debtor, who is able to repay a debt but does not

404. येषां सव्ये वाणि साधकवाधकयमाणोपस्थासोपयोगीणि तत्र भवन्ति तत्र सव्येष्वेव हेतुवाणि न सर्वाणि प्रयोजनाभावात् । अथराकं. p. 608.

405. उत्तमर्णश्चेद्वाजानिवातद्विमापितोऽधमर्णो राज्ञे धनद्वयभागसंनिधं दण्डं दद्यात् प्रतार्यश्चोत्तमर्णो विद्वान्निमग्नश्च । विष्णुधर्मसूत्र VI. 20-21.

406. कृत्रिकः सधनो यस्तु दोषात्तयाजं प्रयच्छति । राज्ञा दायवित्तवः स्यात् दृष्टीत्या पञ्चकं शास्त्रम् । नारद IV. 132. The text, मयूख p. 182 reads दृष्टीत्यां तु निशकम् (i. e. 20 per cent).

do so through wickedness or malice, should be made to pay the debt after recovering five per cent. from the debtor. The Sm. C. II. p. 121 says that this applies to a case where the debtor admits his liability to the plaintiff. Manu VIII. 139 gives milder rules: 'if a debtor admits before the Court that he is a debtor, then he has to pay a fine equal to five per cent on the amount decreed, but if he denied the fact of debt altogether, then he has to pay as fine ten per cent'. Manu VIII. 59 which prescribes a fine twice of that amount which the debtor falsely denies or which the creditor falsely claims contains a somewhat different rule (which Medhatithi says applies where parties are guilty of downright fraud, while VIII. 139 applies where there is negligence or loss of memory &c.). In suits other than for debts such fines are also prescribed e. g. in Yāj. II. 26 for one who misappropriates a pledge, II. 33, II. 188 (for breach of the rules of guilds and other groups), Yāj. II. 171 (where a person claiming to be the owner of lost goods and failing to prove his ownership of them was fined *pañca-bandha* i. e. a fifth part of the price of the goods). Kaut. prescribes⁴⁰⁷ that when a party is guilty of contradictory pleadings, or does not cite witnesses though saying he has witnesses and is defeated for these and similar reasons he has to pay a fine of 20 per cent of the claim and 10 per cent only if he relied on his own deposition (and called no witnesses) and further the defeated party has to pay the costs viz. the wages of the bailiff and of the subsistence allowance of witnesses. Therefore it may be said that in ancient times Indian litigants had an easy time, while in modern times litigation is often ruinous, what with the heavy court fees to be paid in several courts, the fees of legal practitioners and the expenses of witnesses and the delay of years⁴⁰⁸. The remark of Dr. Hart (in 'Way to justice' p. 17) is as applicable to modern India as to England 'the plain truth is that the justice of the courts is unattainable by some citizens through want of the necessary financial resources; while in the case

407. परोक्षदण्डः यज्यमन्त्रः स्वयंपादिदण्डो दण्डमन्त्रः । इदमभितरदाहः । पाणि-
भक्तमर्थविशेषतः । तदुभयं निचम्यो दण्डात् । अर्थशास्त्र III. 1.

408. In modern times a plaint or memorandum of appeal is to be rejected if not properly stamped. Vide Order VII. r. 11 of the Indian Civil Pro. Code. The Peshwa's Government appears to have taken one-fourth or one-fifth from the party whose claim for partition or for recovery of debt succeeded. Vide 'Peshwa's Diaries' ed. by Rao Bahadur Wad, vol. 2 pp. 132, 146, 163.

of many others it is not worth having at the cost which it involves.

In one of his most famous soliloquies Shakespeare (in *Hamlet* III. 1 'Oppressor's wrong, the proud man's contumely, the pangs of despised love, the law's delays') enumerates law's delays among the principal evils of human life. In modern India as in England⁴⁰⁹ before 1873 delay in the decision of causes is a crying evil. In the rough and ready methods of administering justice in ancient India care seems to have been bestowed on disposing of cases as quickly as possible. The story of king Nrga who caused delay has already been referred to (p. 243). Kaut. (III. 1) states that if the plaintiff, after the defendant files his answer, does not on the same day begin to support his case (by evidence) he would be declared to be defeated, since the plaintiff comes to court after determining the strength of his case, but the defendant does not do so (he is dragged to the court); that the defendant may be allowed an adjournment of three or seven days for his defence; if he is not ready with his defence within that time he may be punished with a fine ranging from 3 to 12 panas; if he does not answer even after three fortnights he shall be punished with fine for *parokha* (viz. *pañcabandha* or *daśabandha* as stated above in note 407) and the plaintiff's claim would be recovered from the property of the defendant. A similar rule is laid down in *Manu* VIII. 58. *Yaj.* II. 12 prescribes that disputes relating to *sāhasa* (killing by poison or weapon), theft, abuse, assault, cows, charges of grave sins and women (about the chastity of all women and about ownership in the case of female slaves), the defendant has to make his defence at once, and that in other cases time may be granted at the discretion of the court. *Nār.* I. 45 is to the same effect. *Nār.* I. 44 holds that adjournments may be granted in suits about debts and the like for finding out the truth as such disputes are complicated and as memory is weak. *Pitāmaha* (q. in *Sm. C.* II. p. 42) says that adjournments may be granted in disputes about deposits, sealed deposits, gifts, partnerships, transgression of conventions and partition of heritage. *Gautama* XIII. 28 speaks in general terms of an adjournment for one year, when the defendant does not remember the transaction, but prescribes immediate trial in

409. For the enormous delay in the disposal of even simple proceedings or Bills in Chancery in England, vide Holdsworth's 'History of English Law' (1926) Vol. IX. pp. 374-375 and 433-435.

disputes about kine, women and children or when the matter is urgent i. e. where loss or abandonment of the thing will be the result of delay (Gaut. XIII. 29-30). Bṛhaspati allows time even to the plaintiff if he is not able to put forward his case owing to his immaturity or lack of boldness.⁴¹⁰ Kāt. (145-158 quoted by Aparārka p. 619, Sm. C. II p. 42, Par. M. III pp. 69-72) contains elaborate rules about adjournments. He says that according to the importance or otherwise of the dispute, one, three, five, or seven days may be allowed to the defendant to make his defence in disputes about debts, according as the debt was contracted three months ago or 6, 12, 20 or 30 years ago; that even more than a year may be allowed if the defendant is an idiot or lunatic or is suffering from disease or if the subject of dispute or the witnesses are in a foreign country; that more adjournments than one may be granted in such cases; that according to Bṛhaspati in disputes about immoveable property also no adjournments should be granted; that if the act of God (*daiva*) or the king prevents the defendant from making his defence he should not be declared defeated, but time should be granted to him to prove this. It is clear that with the advance of time adjournments became longer and more frequent in Kāt. compared with the rigid rules of Kauṭ. Kāt. and Śūkra (IV. 5. 167, 209) contain the last word on this point. According to them delay in deciding causes is tantamount⁴¹¹ to denial of justice (*dharmavyūpatti*, lit. death of Justice).

The sequence of stages in a law-suit is as follows: first the plaintiff makes his averments, then the defendant makes his reply; when both have finished, the members of the court speak (or deliberate among themselves) and after them (speaks) the judge (Kāt. 121 q. by Aparārka p. 611, Par. M. III. p. 58). The four stages (*pādas*) of a law-suit, acc. to Yāj II 6-8, and

410. कजोपनिभिनिशेषदानसंभूयकर्मणाम् । समये दावभावे च कालः कार्यो न्य-
स्ततः ॥ पितृमाह १. in स्मृतिच. II. p. 42; अभिवोक्ताऽन्यस्मत्तदा वक्तुं नोत्सहते यदि ।
तस्य कालः यदाहायः कार्यसकलकृतः ॥ बृहस्पति १. in स्मृतिच. II. p. 40, अपराह
p. 611.

411. न कालहर्णे कार्ये राज्ञा साधनदर्शने । नवान्न दोषो भवेत्कालाद् धर्मव्यापि-
लक्षणः ॥ दद्यादेसाहस्यं तु काले साधनदर्शने । उपार्थि वा समीप्यैव द्वैराजहर्ते सदा ॥
शूक्र IV. 5. 167 and 209. The first is almost the same as Kāt. 339 (q. in
स्मृतिच. II. p. 92, य. मा. p. 306, म. वि. p. 148, which read साक्षिभभावे and
धर्मव्यापिः)

Br. are named ⁴¹² *bhāṣāpāda* (the plaint), *uttarapāda* (the reply), *kṛāpāda* (the adducing of evidence), *sādhyaśiddhi* ⁴¹³ or *nirṇaya* (the decision); while Kāt. 31 states them as *pūrvapakṣa*, *uttara*, *pratyākālita* and *kriyā*. *Pratyākālita* means 'discussion or consideration among the *sādhya*s about the burden of proof' (vide p. 260 n. 337). If several persons come simultaneously with complaints or plaints, then the order of taking up the cases is regulated by the *anvaya* of the plaintiffs i. e. the suit of a brāhmaṇa is first taken up (Manu VIII. 24). Kaut. I. 19 states ⁴¹⁴ that the causes of temples (or idols), ascetics, heretics, brāhmaṇas learned in the vedas, about cattle and sacred places, of minors, of the aged, of those afflicted with disease or misfortunes, of the helpless and of women are to be looked into in the order enumerated or according to the importance of the causes or their urgency. Kāt. (122 q. in Sm. C. II. p. 35, Par. M. III. p. 59) says that preference should be given to that litigant whose injury is greater or whose cause is more important than those of the rest. Kaut. III. 20 went ⁴¹⁵ so far as to say that judges should look into the causes of idols (or temples), brāhmaṇas, persons performing austerities, women, minors, the old, the diseased, the helpless, even if they did not come forward to complain nor should judges put forward the excuses of time (i. e. the long delay in taking cognisance of their causes), place, or (long) enjoyment (of their opponents).

Lengthy quotations and illustrations are cited in the commentaries and digests about the requirements of a good plaint. They are all passed over. They well illustrate the *penchant* of ancient Indian writers for divisions, sub-divisions and subtle distinctions.

Kāt. (136 quoted by Aparārka p. 609) specifies several reasons which make a plaint unacceptable viz. one that lacks

412. पूर्वपक्षः स्तुतः वादो द्वितीयस्तुतरस्तथा । क्रियापादस्तथा वाच्यश्चतुर्थो निर्णयस्तथा ॥ वृत् ॥ १. by अपरार्क p. 616; पूर्वपक्षश्चोत्तरं च प्रत्याकलितमेव च । क्रियापादश्च तेनार्थं चतुर्थपादस्तमुदाहृतः ॥ कात्या- १. by अपरार्क p. 616. V. P. p. 44 quotes a verse of Br., where प्रत्याकलित is the 4th पादः.

413. अथ च सिद्धिश्चाद्येन सन्धानानामपि प्रत्यक्षपक्षपराजयापधारणोपायभूतं धर्मान्तस्त्वेदं शास्त्रः धर्मातीति विचारकाणां परामर्शः प्रत्याकलितादिशब्दवाच्य उच्यते सिद्धिकलत्वात् । अपरार्क p. 616.

414. तस्मादेतानामनपायशब्दो विपक्षोदुत्पन्नानाम् । बालवृद्धन्यायितापसम्बन्धानां स्त्रीणां च कमेण कार्याणि यदेतत् । कार्यमीरवादात्पक्षिकसैन वा । अर्थशास्त्र I. 19.

415. त्वेवमाह्वयतवस्त्विवाहवृद्धन्यायितानामनपायानामनभिसरतां धर्मस्थाः कार्याणि कुर्याः । न च देशकालभोगच्छलेनातिवरेयुः । अर्थशास्त्र III. 20.

the mention of the time and place (of the cause of action), that omits the statement of the material (*dravya*, which is the subject of dispute) or the amount thereof and that is wanting in (stating) the extent of the relief claimed, that is opposed (to the interests or usages) of the country, that is prohibited by the king's order, that mixes up several vyavahārapadaś, ⁴¹⁶ Certain plaints are declared to be vitiated (*pakṣābhāsa*) ⁴¹⁷ and not entertainable viz. a plaint that contains an unknown (or imaginary) grievance, that discloses no injury, that contains letters or words making no coherent sense, that states no cause of action, that is incapable of proof or is self-contradictory (Kāt. 140 q. by Mit. on Yāj. II. 6, Par. M. III. 61). Nār. II. 8 also points out the faults (*doṣas*) of a plaint and explains them (II. 9-14). Bṛhaspati states that there is to be no law-suit between teacher and pupil, father and son, husband and wife, and master and servant. This does not mean that law-suits between these pairs are altogether prohibited but that suits between them are undesirable, that the king or judges should persuade them to desist from proceeding in Court, that if they persist the court has to decide the suits according to the śāstra. ⁴¹⁸ Manu (VIII. 299-300) prescribing the same punishment as for a thief in cases where a wife, son, slave, servant or brother is beaten for correction more severely than is allowed in the śāstras by the husband, father, master, or elder brother respectively conveys by implication that a legal proceeding by these is possible. The smṛtis did not encourage disputes based on

416. If a plaintiff states ' the defendant stole my gold, I deposited a thousand *drammaś* with him which he does not return, he sold a cow to me without being its owner ', there is a joinder of three vyavahārapadaś viz. *steya*, *nikṣepa*, *ascūmivikraya*. This is not a bad or altogether unacceptable plaint. All that is meant is that the trial of all these cannot be carried on simultaneously, but one after another.

417. अवशिष्टं निरापारं निरर्थं निष्प्रयोजनम् । असाध्यं वा विदुषं वा पश्यामानं विवर्जयेत् ॥ कात्यायन quoted by मिता, on वा. II. 6 (without name), परा. मा. III. 61. The स्मृतिच. II. 37 ascribes the same verse to बृहस्पति (last pāda being पक्षं राजा विवर्जयेत्). Vide my notes to Kāt. 140 where it is shown how there is a good deal of divergence about the interpretation of this verse.

418. सुवशिष्टो पितापुत्रौ दम्पती स्वामिभृत्यकौ । एतेषां समवेतामां व्यवहारो न विद्यते । नारद acc. to विश्वस्व on वाङ्. II. 5, and बृह. acc. to मदनमोहन and स्व. व. p. 34. The latter remarks ' तस्मादिदं वचनं सुवशिष्टोऽपि शिष्यादिभिः सह व्यवहारकरणे लोकादये न श्रेय इह निम्बावहत्यादिसुखं नरकजनकत्वादित्येतत्परमेव । राजादिभिस्तु नाप्यसंस्थितो व्यवहारो लोकादयस्त्वनिकरत्वादिति निवार्यमाणा अपि शिष्यादयो न परितुष्टवन्ति चेत्तदा तेषां वधाशक्तं निर्णयकरणमदोष एव ।' vide also मिता. on वा. II. 32 for similar words.

flimsy or trumpery grounds. Bṛhaspati⁴¹⁹ says that a plaint that is *nirarthaka* (i. e. the injury in which is very small or the monetary value involved is negligible) should not be entertained by the king. This is on the principle of *de minimis non curat lex* (the law does not take account of trifles) also embodied in sec. 95 of the Indian Penal Code.

When the plaint has been finally settled, the defendant should be called on to reply in writing to the plaint in the presence of the plaintiff (Yaj II. 7, Nār. II. 2). This is called *uttara* (reply) or *pratipakṣa* (Nār. II. 2). When time may be given to the defendant for putting in his answer has already been stated above.

The answer of the defendant must possess the following characteristics viz. it must completely meet all the points of the plaint, it must not deviate from the truth, must not employ vague words, must not be self-contradictory, it should not be such as to require further explanation (because of containing words in a foreign tongue or unknown or rarely used words or elliptical or badly arranged sentences).⁴²⁰ A reply is of four kinds, (1) *mithyā* (of denial), *sampratipatti* or *satya* (confession or admission), *kāraṇa* or *pratyavaskandana* (of special plea or demurrer), *prāṇnyāya* or *pūranāyāya* (of former judgment or *res judicata*). A reply of denial may take four forms (Nār. II. 5) viz. (1) this (what is affirmed in the plaint) is false, I do not know anything about it, I was not present (when the transaction alleged in the plaint is said to have taken place), I was then not born.⁴²¹ The first is a direct denial, the others are implied or indirect. Very strict rules of pleading were evolved by the

419. स्वल्पानराधः स्वल्पार्थो निरर्थक इति श्रुतः । वृहस्पतिः q. in स. वि. p. 87 and स्मृतिच. II. p. 37, which explains तत्र निरर्थकस्पोदाहरणम् । अहमेतेन सस्मिन् निरीक्षितः मानकी दाशानेनापहृता इति वा ।

420. यस्तस्य स्वापकं सारमसन्दिग्धमनाकुलम् । अपवादवाचस्पतिरेतदुत्तरं तद्विद्वो विदुः : quoted by मिता. on वा. II. 7. अपराकं p. 612 (ascribes to नारद), स्मृतिच. II. p. 42 (ascribes to यज्ञवल्कि), शुक्र IV. 3. 139.

421. मिथ्या अथ तिपातिर्वा परवचस्कन्दमेव वा । याज्ञवल्क्यपिप्रस्तावत् वा उत्तरं स्वाक्ष-सुर्विधम् । नारद II. 2; कात्यायन has सत्यं मिथ्यात्तरं चेत् परवचस्कन्दमेव तथा । पूर्वस्वा-चक्षिधैवमुत्तरं स्वः श्रुतिविधम् * q. in. मिता. on वा. II. 7. The same is शुक्र IV. 3. 144. एतदेवाधर्ममिति नै. श्रुतिवचने । इत्युक्तवाचनः त्वपेता तु किंवा एव ह्यभियुक्तं कीर्तिता । आधर्म्यं तद्विज्ञानीयतयुवदक्षस्य तस्यथा * स्वयं. मि. p. 51 and अ. म. p. 307 (roads वाकिता तु किंवा). आधर्म्यं is probably derived from अधर (meaning 'lower', 'weak' or 'inferior'). The स्व. म. reads आधार्य, which appears to be a wrong reading.

time of Kāt., who provides (144) that if a statement asserted by the plaintiff in the hearing of the defendant is not traversed by the latter or if the latter remains silent when he should have given a reply, it (should be held by the court that it) is admitted (by the defendant).⁴²² When the defendant declares the truth of the claim made in the plaint that is a reply of admission. Where the defendant accepting as correct the matters (or facts) set out by the plaintiff raises a plea, that is a reply of special plea.⁴²³ The same is designed by some as *ādhyāya* or *ādhyaya* (rendering futile) of the plaint. For example, where plaintiff avers that defendant took one hundred rupees and defendant accepts that fact but adds either that he later on returned them or that they were really donated to him, that is a reply of special plea. Where a person though defeated in a (former) proceeding again causes a plaint to be written and is addressed (answered) with the words 'you were formerly defeated', that is a reply of former judgment. That there was a former judgment between the same parties may be proved by citing the judges or arbitrators or by citing other witnesses or by producing the writing itself i. e. the copy of the judgment (Kāt. 172).⁴²⁴ In a reply of admission there are only two stages of *vṛkabhāra* viz. the plaint and the reply; there is no need of proof (so there is no *kṛyāpāda*) and the plaintiff succeeds as a matter of course (and so there is no necessity of a regular judgment, *nirṇaya*). Kāt. (173-190) states at great length the faults of a reply and also what are not proper replies. The Mit. (on Yaj. II. 7). Aparārka pp. 613-614, Sm. C. II. pp. 43-46 and

422. आप्यमाणीयिना पत्रपो ह्यर्पो न विधातितः । दानकालेऽथवा तृष्णी विवतः सोर्धोविमोदितः ॥ कात्या. q. by कुर्यकल्पसूत्र. Compare Order VIII rule 5 of the Civil Pro. Code.

423. अधिना लेखितो पोर्यः पत्रधी पद्धिर्न तथा । यद्यप्य कारणं ज्ञातव्यमवकाशं न स्मृतम् ॥ सूत्र IV. 5. 148. नारद q. by मित्र. on वा. II. 7; vide कात्यायन 170, q. by स्व. मा. p. 307 (reads पोर्यिनाथः सङ्ग्रहितः), स्व. प्र. p. 39 (which reads आधर्षं सुमुखवीत् as the last *pāda*).

424. विभावयानि कुलिकैः साक्षिभिर्निश्चितेन वा । जितश्वेन मयापं याकृमाकृत्याप-
स्त्रिमकारका ॥ कात्यायन q. by स्मृतिच. II. p. 43 which explains 'कुलिकैरिति यकृ-
तपत्रहारद्वयुपासुपलक्ष्यार्थम्', स्व. प्र. p. 61. The स्व. नि. (p. 33) has the follow-
ing note on this 'तेनैवयानि जितश्वं याकृत्यापविधिमिदौ जपयन्नेनाह भावयामीत्येकः
कुलपत्रहारे च जपयमाभावात् कुलयाः कुलविवादेषु विज्ञेयान्तेपि साक्षिणः—इति वचनात्
नेरेव पत्रहारद्विभिर्भाषयामीति द्वितीयः । राज्ञा धर्मात्मनश्चेन पत्रपुत्रं तत्रवृद्धिना । नाप्यः
साक्षिर्भवेत्तत्र मुक्त्वा राजानमीश्वरम् ॥—इति वचनात् साक्षयभावात्तेन राज्ञा भावयामीति
तृतीयः ॥'

other digests quote long passages from Kāt., Br., Hārita, Vyāsa and others on faults of *uttara* and illustrate them at length. These have to be omitted for want of space. One of the faults is 'sauhara' (mixture or confusion or misjoinder of pleas in defence). For example, if the plaintiff alleges 'the defendant took gold, a hundred rupees, certain valuable clothes and a quantity of corn and has not returned any of them,' and the defendant's reply is 'I took the gold, I never took any rupees, the plaintiff donated the clothes to me, as to the corn plaintiff had already filed a suit against me and failed'. Here the reply contains all four varieties, viz. the first is a reply of admission, the 2nd is one of denial, the third is a special plea and the 4th is a plea of former judgment. This is a *sauhara*. But it is not meant that this reply would not be allowed. All that is meant is that, as the burden of proof varies, the adducing of evidence will not be allowed simultaneously, but one after another. Vide Mit. on Yāj. II. 7, Par. M. III. pp. 77-80. These questions are concerned with cases in which several issues arise, the burden of proving some of which lies on the plaintiff and the burden of proving others lies on the defendant. If a defendant does not come forward to give a reply, the king or judge should make him give one by *śīma* (conciliatory words), *bheda* (threats) and other ways and if he does not give a reply for seven days after that, he may be declared to have been defeated and a decree may be passed against⁴²⁵ him. Kaut. (III. 1), Yāj. II. 9, Nar. I. 55, Kāt. (163) state that a defendant cannot⁴²⁶ raise a counter-claim (*pratyakhyoga*) as long as he has not met the attack of the plaintiff, nor should another plaintiff attack a person who is a defendant in a suit already filed, except in the case of abuse and assault, *sāhara* (death or grievous hurt by a weapon &c.), theft or in a very urgent matter, or in disputes among members of caravans or guilds or in charges of adultery, Yāj. II. 29, Nar. IV. 93, Śukra IV. 5, 120 say that when a litigant dies while a suit is pending, his son (or other representative) who takes his estate should carry on the litigation or be liable for the claim and the son cannot add his own enjoyment (to make up

425. उपप्रेष्योद्यमानस्तु न दद्यादुत्तरं तु यः । अतिक्रान्ते सप्तरात्रे जिहोऽसौ द्वाहः महति ॥ वसिष्ठ q. to ह्युत्तिष्ठः II. p. 46, परा. मा. III. p. 81, व्यव. मा. p. 56 (reads उपप्रेष्योद्यमानः and दण्डमहति). This is Hārita acc. to म. वि. p. 99.

426. अभियुक्तो न दद्यादभियुक्तं अन्यत्र कलहसाहससार्थसमवायेभ्यः । न चाभियुक्तेऽभियोगोस्ति । अर्थशास्त्र III. 1; अभियुक्तोऽभियोगादभियुक्तं कर्हिचित् । अन्यत्र दण्डयादयस्तेष्वसंयदयापयात् ॥ कात्या. q. by व्यव. मा. p. 299; should we not read नाभियुक्तो or नाभियुक्तो?

three generations &c. as required for possession ripening into ownership).⁴²⁷

There were many grounds on account of which a litigant became what is called *hīna* (a losing party) and some times either had his plaint dismissed or his defence struck out and a decree passed against him or he was simply fined. For example, Nār. II. 33 speaks of five kinds⁴²⁸ of *hīna* viz. one who changes his statements (or pleading), who does not prosecute his pleading by adducing evidence (i.e. avoids investigation), who does not appear when summoned, who gives no reply, who disappears or runs away when summoned. Nār. I. 56-61, II. 24 explain some of these and other *hīna* parties. Kāt. 202 (q. by Sm. C. II. p. 47) prescribes that the above five should respectively be fined 5, 10, 12, 16 and 20 panas. Nār. II. 25 states that in all civil disputes such as those about women, land or debts the litigant does not lose his cause even if he commits a mistake in his statements, but he is liable to fine. This conveys that in disputes arising out of wrath (*manyukṛta* i.e. in criminal matters) a person loses his cause if he is guilty of the above acts and he is prohibited from pursuing the matter again. Kaut. III. 1, Manu VIII. 53-57 contain in almost the same words, certain similar rules, Kaut. calling the several actions causes of *parokṣa* (defeat). Vide Yāj. II. 16, Śukra IV. 5, 136, Kāt. 191-210 for further details on dismissal for default and cognate matters. In these cases of *hīnaśūdras*, though a fine was imposed, a retrial could be ordered. When defendant filed his reply and parties joined issue in court, Br. and Kāt. say that they should not then be allowed to compromise the dispute privately without the permission of the

427. योभिद्युक्तः परेतः स्वाधस्य रिक्थी तदुद्धरेत् । या. II. 29 ; तदर्थं पितृया वादं ह वादिनी तु युती यदि । तद्युक्तो विपक्षे सज्जो ह्यन्यथा ह निवर्तयेत् । शुक् IV. 5, 120.

428. अन्धवादी किपक्षेयी नोपस्थाता निवचनः । आहूतमप्यपी न हिनः पञ्चविधः स्मृतः । नारद II. 33.

429. पूर्वोक्ते संनिषिद्धे विचारे संवर्तते । यज्ञं ये मियो याग्यि द्वाप्यास्ते द्विष्टा इमं य ... साक्षिसम्बन्धिकापस्तु भवेत्तत्रोभयोरपि । दोलायमानो यो सन्धिं क्षुण्णो हो विचक्षणः ॥ द्वाप्याप्यमता यत्र भेदः शास्त्रवर्तिनोः । तत्र राजाज्ञया सन्निवर्तयोरपि शस्यते । बृह. q. by स्मृतिक- II. p. 49, स. वि. 104, परा. मा. III. pp. 84-85, स्व. प. p. 77; आनेयं यद्वर्तितायै यज्ञं याग्यि ये निधः । सर्वे द्विष्टा यद्विष्टाः स्मृतिपल्लवान्मुपस्य तु । कात्या. 210, q. by स्मृतिक- II. p. 49, परा. मा. III. p. 84, स्व. प. p. 77. the स्व. प. says (p. 77) 'द्विष्टा यो यज्ञस्तु पराजयनिमित्तद्विष्टायेत्यत्र न ह विधातृसमूहपूतद्विष्टायेत्यत्र । अद्वयविषयद्विष्टायेत्यत्र । Vide S. B. E. vol. 33 pp. 295-296 verses 10-12 for Br. (Dr. Jolly's tr. of verse 10 is not correct). Compare Order 23 r. 2. of the Indian Civil Pro. Code and sec. 345 of the Criminal Pro. Code for compounding offences).

court; if they did so they were both to pay double of the fine imposed on a defeated party, as they deprived the king of his dues (court fees). But a compromise with the court's permission was allowed when the parties were in doubt as to what the witnesses might say or the *sabhyas* might decide (in such cases it would be wisdom for the parties to compromise) and particularly when the evidence on both sides was evenly balanced or where there was a conflict between the different *smṛtis* and usages.

When the reply had been given the *sabhyas* had to consider the question about the burden of proof. Br.⁴³⁹ says 'the *sabhyas* after considering the nature of the reply should call upon one of the parties that are in court to establish his case' (Sm. C. II. p. 50). What a party sets out to establish is called *sādhyā* and the means whereby the claim (of the litigant) in its entirety is established is called *sādhana* (Kāt. 213 in V. P. p. 79). Yāj. II. 7 and Nār. II. 27 say that the party (on whom the burden of proof lies) should immediately (after the reply is given) write down the means whereby he proposes to prove his averments. This third stage (*pāda*) is called *kriyā* i. e. proof. *Sādhyā* and *kārya* are synonyms, *kriyā* and *sādhana* also are synonyms (Kāt. in Aparārka p. 616, Vyāsa in Sm. C. II. p. 54). The rules about burden of proof are laid down by Hārita (q. in Mit. on Yāj. II. 7, Aparārka p. 616). In a reply of denial, the burden of proof is on the plaintiff, in a reply of former judgment or of a special plea, it is on the defendant and in a reply of admission no question of burden of proof arises. Compare also Nār. II. 31. The Mit. on Yāj. II. 80 states another rule that an affirmative proposition has to be proved by him who asserts it (*bhūtvapratijñācādinā eva kriyā*). Yāj. II. 22, Nār. II. 28-29 and IV. 69, Br. (in Sm. C. II. p. 54), and others say that means of proof are two-fold, human and divine, and that documents, witnesses and possession are the human means of proof (Vas. 16. 10 also), while the ordeals of balance and others are divine means. Yāj. II. 22, Nār. II. 29, Kāt. 217 expressly state that ordeals are to be resorted to only when none of the human means are possible or available. If one party relies on human means alone and the other offers divine means, the king (or judge) has to accept human means and not divine; in disputes among men, if there be human means of proof though reaching

430. येन विद्वन्नि कथं तेषां सम्यग्निर्माणा । कडापितोत्तरं सन्मन्त्रात्तदेकपदादिनः ॥ बृह. in स्मृतिच. II. 50.

(or covering) only a portion (of the allegations in the plaint) then human means should be accepted and not divine ones even though the latter may cover the whole ground (Kāt. 218-219 q. by Mit. on Yāj. II. 22). This latter rule is based on the proposition laid down in Yāj. II. 20 and Visnudharmasūtra VI. 22 that when a party totally denies a claim and the opponent establishes by evidence a substantial portion of it, the judge may pass a decree against the denying party for the whole of the claim. This is practically the same as the maxim 'omnia praesumuntur contra spoliatorem' ⁴³¹. Therefore the general rule was that the divine mode of proof was to be resorted to only in the absence of any human means of proof. Kāt. 229 (q. by Mit. on Yāj. II. 22, Aparārka p. 629) allows witnesses or ordeals when the dispute is started with reference to *sāhasa*, assault or abuse and causes that spring from force and Kāt. 230 (q. in Sm. C. II. p. 51) provides that, in the case of a person guilty of *sāhasa* perpetrated in secret, investigation has to be made by divine proof. Kāt. 225-228 (q. by Mit. on Yāj. II. 22, Aparārka p. 629, Sm. C. II. pp. 53-54) lay down certain rules about preference among the several means of proof: whatever are declared as the conventional usages of the associations of traders, of guilds (of artisans) and of groups (of brāhmanas), the means of proving them are documents and not ordeals nor witnesses: enjoyment ⁴³² (or possession) alone is weightier in the case of the making and (the use of) doors and ways, as also in the case of water-courses and the like (i. e. in the case of easements) and not writing nor witnesses; in the case of things promised to be given but not given, when a decision is to be given in disputes of servants with masters, in the matter of taking back a thing after it is sold or when a person having purchased a thing does not pay the price, in gambling and prize fighting—when in these matters disputes arise the means

⁴³¹. Vide H. of Dh. vol. I. p. 204 and n. 367, where a half verse from the drama Vikramorvaśya (IV. 17) is quoted containing the same proposition and it is shown that Nārada as quoted in V. M. p. 311 and Par. M. III. p. 203 contained the same half verse. The half verse is विभावितेकेदृशेन देवं चक्षुनिपुण्यते. The maxim cited above is relied upon in *Ardashir v. The Collector of Surat* 3 Bom. H. C. R. (A. C. J.) p. 116 and in *Prāmji v. The Commissioner of Customs* 7 Bom. H. C. R. (A. C. J.) p. 89.

⁴³². In *Lalubhai v. Bai Amrit* 1. L. R. 2 Bom. 299 at p. 312 there is a reference to Kāt. 226 द्वास्वार्थकिपात्ते जलवाहादिके तथा । सुक्तिरेव तु सुर्वी स्वात्म विषयं न च साक्षिणः । There is a similar verse of Kāt. 314 (q. in *रसुनिप* II. p. 67) 'स्वपानिर्ममद्वास्वजलवाहादिसंशये । सुक्तिरेव तु सुर्वी स्वात्मप्राप्तोपस्थित निश्चयः ॥'

of proof are witnesses and not documents nor ordeals. Marici (q. by Sm. C. II. 60, V. P. p. 141) states that as regards the sale, mortgage, gift or partition of immoveable property a document (should be executed as it) enables the person (in whose favour it is executed) to acquire (clear) title and freedom from doubt⁴³² (even after the lapse of years). It is in consonance with this that the Indian Legislature (in the Transfer of Property Act, IV of 1882) requires writing and registration as regards the sale, mortgage and gift of immoveable property. Nārada IV. 75 very concisely hits the special characteristics of each *pramāṇa*: 'a document is always strong, witnesses are strong (as evidence) only as long as they are alive, possession becomes strong as time passes'. The comparative strength of the several kinds of evidence is well put by Brhaspati⁴³³: 'Witnesses are superior to inference (circumstantial evidence), a document is superior to witnesses, undisturbed possession for three generations is superior to all these'. Kāt. 221 (q. by Mit. on Yāj. II. 80 and V. P. p. 80) gives the warning that when a litigant abandoning a strong ground or means of proof resorts to a weak one to prove his case, he would not be again entitled to rely on that (strong ground of proof) after the members of the court have decided as to who should succeed. This practically propounds the same rule as that of constructive *res judicata* contained in explanation 4 to section 11 of the Indian Civil Pro. Code (of 1908).

The means of proof will now be briefly dealt with in order. And first come documents. Those in search of an exhaustive treatment may usefully consult Dr. Amarendra Nath Thakur's 'Hindu Law of Evidence' (Calcutta, 1933).

When writing was first employed in India and how the Indian Brāhmī alphabet was derived have been moot points for many decades among scholars. Max Müller's theory ('History of Ancient Sanskrit Literature' p. 507) that the use of writing for literary purposes was unknown to Pāṇini was thoroughly exploded by Goldstücker in 'Pāṇini and his place in Sanskrit Literature' and was later on abandoned by Max Müller himself.

432. स्वागरे निष्पाधाने विभागे दान एव च । लिखितेनानुपास्तित्वेन निर्विवादमेव च ॥ मरीचि q. by सुविच० II. p. 60.

433. अनुमानादहुराः साक्षी महासिन्धो लिखितं सुव । अभ्यासता विदुषी ह्यक्षिरेभ्यो मरीचि ॥ बृह. in एव. मा. p. 350, स्वयंदासव्य p. 224; the same is कात्यायन (313) acc. to एव. मा. p. 313. Probably कात्याय. took over बृहस्पति's verse or there may be some mistake in quoting.

Then Bühler (in 'the Origin of the Indian Brāhmi alphabet') started the theory that Brāhmi was derived from a foreign Semitic script about 800 B. C. and this hypothesis held the field for a long time (vide e. g. Rhys Davids in 'Buddhist India' chapters VII and VIII). Even Western scholars are not now prepared to accept this dating of Bühler; vide Cambridge History of India, vol. I. p. 141 (1922). The excavations at Mohenjo-daro tend to throw grave doubts on this theory and discredit it. At Harappa and Mohenjo-daro there is writing (not satisfactorily deciphered yet) on burnt clay and pottery. The Piprahva vase shows writing on stone several centuries before the Christian era and the Sohagpur copperplate inscription is the earliest writing on copper plates yet discovered (vide Annals of B. O. R. Institute, Vol. XI p. 32 ff). This is not the place to discuss the questions about the origin of the art of writing in India and of the Brāhmi script. It cannot be gainsaid that the most ancient dharmaśāstras refer to writing as well-known. Gaut. XIII. 4 appears to refer to a witness signing himself as such on a document. Vas. 18. 10, Visṇudharmasūtra VI. 23, Yāj. II. 22 mention *likhita* (document) as the first means of proof. Manu VIII. 51 uses the word *karayā* in the sense of document (*arthaparyayamānam tu karayena vibhūṣitam*), in VIII. 168 refers to documents obtained by coercion and in IX. 232 to fabricated royal edicts (*kūṭasāsana*). Kaut. has a special chapter (II. 10) on royal writings (*sāsana*), in which he dilates upon the qualifications of the king's scribe, on the contents of an official document, the good points required in an official missive, on various divisions of writings and on the faults in official writings that are to be avoided. In I. 11 Kaut. prescribes that the king should hold consultations with absent ministers by sending a letter (*patra*, a leaf of palm or a piece of birch bark or similar material) and in I. 19 states that consultation by letter (*patra*) with the council of ministers should be held in the fifth part of the day. In II. 7 Kaut. advises the construction of rooms with shelves for books containing accounts (*akṣapatalam nibandhapustakasthānam kārayet*). Vide also Kaut. II. 21, II. 30, IV. 9, IV. 10 for references to writing in various other connections. Kaut. (III. 1) appears⁴³⁴ to use the word *karayā* in the sense of document and gives a rule which is the same as Yāj. II. 23. Yāj. I. 319 speaks of land grants being written or

434. यस्मिन् तेषां करणमवैशाधिपतेः कथ्येतम् । अर्धपत्रात् III. 1; compare वा. II. 23 सर्वेष्वर्थविषयेषु पत्रवस्तुसरा क्रिया । आपो पतिवशे कीले पूर्वा तु पत्रपत्ररा ॥

engraved on cloth or copperplate. Megasthenes (McCrindle p. 69) no doubt says that Indians have no written laws, but there is no doubt that he is under some misapprehension as to what he was told; since in another place (p. 83) he refers to philosophers committing useful suggestions to writing. Similarly Strabo (XV. 1. 53-54) states that the Indians were ignorant of writing, but (67) narrates that Nearchus states that Indians write letters on cloth. One of the oldest copperplate grants is the Taxila plate of Moga (identified with Moa of the Śakas) and is not later than 120 B. C. Vide E. I. Vol. IV. p. 54 and Rapson's 'Indian coins' p. 7. It appears that wooden boards were used for writing ephemeral matters and *patra* for more permanent use, as Kāt. (p. 293, n. 400 above) states that the first information was to be written on a board with chalk and the formal plaint on a leaf (*patra*). The Lalitavistara (10th chap. p. 143, B. I. ed.) states that the Buddha used a board of sandal-wood for learning the scripts (-candanamayam lipi-phalakam-ādāya).

Yāj. II. 84-94, Nār. IV. 69-75 and 135-146, Br., Kāt. 249-312, Sukra II. 291-318, IV. 172-182 and several digests devote great attention to documents. A few salient points only will be brought out here. Nār. (IV. 70-71) eulogises documents by saying that if the Creator had not created writing which is like an excellent eye, the world would have come to grief and that a document is an indubitable means of apprehending the time, the place, the object, the material, the extent and the duration of a transaction. Br. (q. in V. P. p. 141) says that, since⁴³⁵ people begin to entertain doubts (about a transaction) even in six months (from an occurrence or transaction) the Creator therefore created in the hoary past letters which are recorded on writing material (*patra*). The Lalitavistara (about 2nd or 3rd century A. D.) mentions 64 scripts which were known to the Buddha, among which the first is Brāhmī (10th chap. p. 143). Nār., Br., and Śukra probably try to explain why the alphabet current in their days was called Brāhmī (it was created by Brahmi). Śukra II. 297, IV. 5. 172 are similar verses. The texts divide documents in different ways. Viṣṇu⁴³⁶ Dh. S.

435. वायमासिद्धिर्वा समये आग्निः सखायते वृणाम् । धामाक्षराणि सुखानि पद्याकडा-
न्यतः पुरा ॥ इह- q. by यद. नि. p. 81, यद. म. p. 141: आग्निः पुनर्वपमैवसिद्धिर्वा
निर्वायकं परम् । ... अतस्तत्तत् स्वरूपं लिखितं निर्मितं पुरा । यमाञ्च ब्रह्मणा वाचो वर्ण-
स्वरविचित्रितम् ॥ सुक्र II. 291 and 297.

436. राजाधिकारये तस्मिन्नुक्तकारस्थानं तद्व्यपककराचिह्नितं राजनातिकम् । विष्णु-
धर्मसूत्र VII. 3.

VII. 2 divides documents into three kinds viz. those written before the king (i.e. by public officers), those bearing the superscription of witnesses and those without witnesses. The first is a document written in a state office by a scribe appointed by the king and bearing the signature of the head or superintendent of the office. This is just like the registration of documents in modern India. Br.⁴³⁷ (q. by V. P. p. 141, V. May. p. 24) divides documents into three sorts viz. royal writing, writing made at a fixed place and that written in one's own hand. Nar. IV. 135 speaks of two kinds viz. one written by the executant himself in his own hand and that written by another; (the first of these is valid) without attesting witnesses, while the second requires to be attested. In the former no writer (lekha) nor witnesses are necessary, while in the latter both are necessary. Even now in India no deed concerning even immoveable property is required by law to be attested except mortgages and gifts. The author of the Sangraha, the Mit. on Yāj. II. 84 and several others divide documents into *rājakiya* (public) and *jānapada* (private or of the common people). The V. Mayūka (p. 24) says that *laukika* and *jānapada* are synonyms and *jānapada* document is of two kinds viz. written by the executant himself in his own hand and that written by another, and that the first may be without attestation of witnesses, but the other must be attested. On Yāj. II. 82 the Mit. divides documents into *sāsana* and *ciraka*. The first is the same as *rājakiya* (described in Yāj. I. 318-320) and *ciraka* is practically the same as *jānapada* writing. On Yāj. II. 89 the Mit. remarks that a royal deed must be written in correct and elegant language but a document executed by ordinary people is not required to be in correct Sanskrit, but may be written in the local dialect of the parties. Yāj. II. 89 states that a document written by the executant himself in his own hand is authoritative except when it is brought about by force or fraud. Yāj. II. 84-87 prescribe that a document of debt or the like should be written down by mutual agreement, that the creditor's name should be placed first, that it should

437. राजलेखं स्थानकृतं स्वहस्तलिखितं तथा । लेखं तु त्रिविधं योक्तुं मिथं तद्वचनं वा
 पुनः ॥ इह, in श्रु. म. p. 141, श्रु. म. p. 24, परा. मा. III. 110. स्थानकृत means
 'written in a well-known place by a professional scribe appointed by the
 king or his officers and attested by witnesses.' राजकीयं जानपदं द्विविधं लिखितं
 भवत्य् । सामनं राजदत्तादौ चरितं स्वाहनादिषु । मज्जति q. by स्व. नि. p. 82, स्व.
 नि. p. 83 explains स्थानलेखं तु ग्रामजनपदादिस्थितकृतकायस्थकृतं तद्वचनप्रकाशितं
 चरितमित्युच्यते ।

mention the year, month, half month, *tithi* (day), the names, caste, gotras, the Vedic School, the names of the fathers of the parties, that when the writing is finished the debtor should write at the end that the deed is approved by N. N. (the executant) son of so and so, that an even number (i.e. not less than two) should attest the document, stating their father's names and that they attest as witnesses and the scribe should write at the end that he wrote the document at the request of both parties. If the debtor or any witness cannot write, his signature should be made by another in the presence of all witnesses (Nār. q. by Mīt. on Yāj. II. 87 and by Vy. Nir. p. 87 without name). Rājakiya documents are of three kinds (acc. to Br. quoted in V. P. p. 141, V. May. p. 24) viz. *śāsana* (a royal grant of land), *jayapatra* (a judgment deciding a law-suit), *prasāda-patra* (a deed showing the king's pleasure at the devoted service or bravery of a person); acc. to Vasistha (q. in Sm. C. II. p. 55 and V. May. p. 28) it is of four kinds viz. *śāsana*, *jayapatra*, *ājñāpatra* (a royal command addressed to feudatories, high or low officers like the wardens of the marches), *prajñāpanāpatra* (a writing of request addressed by the king to sacrificial priests, a *purohita*, teacher, learned brāhmanas or other highly honoured persons); it is five-fold acc. to S. V. pp. 111-113 viz. *śāsana*, *jayapatra*, *ājñāpatra*, *prajñāpanāpatra* and *prasādapatra*. Kaut. in II. 10 speaks of several kinds of royal orders and names them, such as *prajñāpanā* (request by a messenger about what another prays), *ājñāpatra* (as above), *paridāna* (honour to the deserving or gift in distress), *parihāra* (remission of taxes for certain castes or villages by the king), *nirastilekha* (writing whereby the king accepts the actions or words of some trustworthy person as his own), *prūṣṭika* (conveying information about some portentous happening or some news about enemies etc.), *pratilekha* (reply in accordance with discussion held with the king on a message from another), *sarvatraṅga* (order addressed to high functionaries and officers for the welfare of travellers). The contents and form of royal grants have been described in H. of Dh. vol. II pp. 860-861. The jānapada writings are divided into various sorts, seven (acc. to Br. q. by Aparārka p. 683, Sm. C. II. p. 60) or eight (acc. to Vyāsa in Sm. C. II. p. 59) and the Sm. C. remarks that there is no emphasis on the number and there may be many more varieties. Br. (S. B. E. vol. 33 p. 305), Kāt. (254-257) and others mention and define the following jānapada writings; *bhāga*- or *vibhāgapatra* (deed of partition), *dānapatra* (deed of gift),

krayapatra (sale deed), *ādihānapatra* or *ādhipatra* (deed of pledge or mortgage), *sthitipatra* or *samvitpatra* (deed of convention, which is made by the inhabitants of a village or city or the members of a corporation or guild by mutual agreement for settling their conventions), *dāsapatra* (deed of bondage to serve executed by a person devoid of food or clothing), *ṛṇalekha* or *uddhārpatra* (bond of debt promising return at a future date with interest), *viśuddhipatra* (deed of purification given to a person with the attestation of witnesses when a penance for a sin has been performed), *sandhipatra* (deed of peace when a compromise in the presence of leading people after a charge of the commission of a crime has been made), *simāpatra* (deed of boundary when a dispute about it is settled), *upagata* (a receipt passed by the creditor to a debtor on payment of the whole or part of a debt, Yāj. II. 93), *anvādhipatra* (a sub-mortgage i. e. where the mortgagee or pledgee mortgages or pledges the property or thing to another and hands over the former deed to his own creditor). The two branches of private documents (*jānapada*) are either *ciraka* or not *ciraka*; *ciraka* is defined as a document written by hereditary scribes residing in the capital, who are approached by the parties and bearing the signatures of the parties and witnesses and the names of their fathers (Sangraha q. by Sm. C. II. p. 59, Par. M. III. p. 127). Vide n. 437 above and Sukra II. 299-318 and IV. 5. 172-177 for definitions of these and other kinds of documents. But acc. to Vyāsa quoted by Sm. C. II. p. 59 private documents are of eight kinds viz. *ciraka*, *upagata* (a receipt), *svahasta* (written by the executant himself), *ādhipatra*, *krayapatra*, *sthitipatra*, *sandhipatra*, *viśuddhipatra*. Some works like the *Vyavahārasāra* (p. 69) and the *Mit.* write the word as *ciraka* and not *ciraka*. It was so called (viz. *ciraka*) probably because it was written on the bark (of the bark of the birch or some other tree). If the proper word is *ciraka* then it was employed because being executed by scribes appointed by the king, it had validity for all time (*cira*) as compared with purely private documents. 'Ciraka' in this last sense seems to be equal to 'sthānakṛta' of other writers.

Nār. 438 IV. 136, Viṣṇu. Dh. S. VII. 11 and Kat. (252) require that a document is held valid which is not adverse to the custom of the country, the contents of which follow the rules

438. देशाचारादिद्वयं पदव्यक्तापि विधिबलमात्रं । इत्यमरान् स्मृतं देवदत्तविज्ञानकमा-
करम् ॥ मातृ IV. 136; देशाचारादिद्वयं व्यक्तापि विधिबलमात्रमात्रं समाचर्य ।
विष्णुधर्मसूत्र VII. 11.

regarding pledges (and other transactions) and the sequence of the sense and of the words in which is not contradictory or confusing. Sm. C. II. p. 59 applies the word ⁴³⁹ *pañcārūḍha* (on which five are recorded) to documents that are signed by the creditor, the debtor, two witnesses and the scribe. The *Sarasvativilāsa* p. 114 holds that *pañcārūḍha* consists in having the creditor, debtor, witnesses (as one item), scribe and the matter to be written. *Hārīta* and *Vyāsa* (q. in Sm. C. II. p. 59) employ the dual (*sakṣinau*), while *Yāj.* II. 87 employs the plural. Therefore ordinarily two witnesses sufficed, but in very important writings there should be more witnesses. *Viśvārūpa* reads 'asamāḥ' in *Yāj.* II. 87 and requires three witnesses as the minimum. *Nār.* IV. 137, *Viṣṇu*⁴⁴⁰ Dh. S. VII. 6-10, Br. (S. B. E. vol. 33 p. 307 v. 23.), *Kāṭ.* (271) state that a document is invalid that is executed by a person intoxicated, by one already charged (with an offence), by a woman, a minor, that has been brought about by threats or deceit or coercion, by one dying, by one diseased, by a lunatic, or by those that are dependant. *Viṣṇu* Dh. S. (VII. 8-9) and *Kāṭ.* 273 (q. by V. M. p. 338, *Aparārka* p. 686, *Par. M.* III p. 131) state that a document may be held invalid owing to defects in the witnesses or in the scribe or to the fraud of the creditor or executant.

Nār. IV. 145, *Kāṭ.* (306-307), *Saṁvarta* (both quoted by *Aparārka* pp. 691-692) and Br. (S. B. E. 33 p. 309 verse 31) say that no oral evidence should be allowed to contradict the (terms of a) document, that the mode of proving (a matter) by a document is always superior, that a writing can be refuted or superseded only by another document relating to the same matter and not by the oaths of witnesses and that if oral evidence

439. उत्तमर्णाधमर्णौ च साक्षिणौ लेखकस्तथा । समवायेन चैतेषां लेखं कुर्वीत नाग्यथा ॥ इति हारीतेन लेख्यमात्रे साक्षिणापिबुक्तत्वात् । एवं चान्यकुललेख्यस्योत्तमर्णाधमर्णासाक्षिद्वयलेखकत्वात्पञ्चबुक्त्वात्तस्याप्येकस्यैवमिति लोके व्यवहारः साक्षिसंख्याधिकत्वे चायं व्यवहारो गौण इति मन्तव्यम् । स्मृतिच० II. p. 59.

440. तद्वक्तृत्वात्तत्तममनायम् । उपधिहृताश्च सर्व एव । इषितकर्मबुद्धसाहचर्येन ससाक्षिकमपि । तादृग्विधेन लेखकेन लिखितं च । क्षीयालक्षकत्वमसौगन्धवर्धिततादित्युक्तं च । विष्णुधर्मसूत्र VII. 6-10 : अमुं पुञ्जिभूतार्थमीमन्त्यसनादुरैः । निशोपधिहृतात्कारकुर्वन् लेखं न सिध्यति । बुद्ध, q. by स्मृतिच० II. p. 62. *Manu.* (VIII. 165 and 168) declares that fraud vitiates all transactions. Compare with *Viṣṇu* Dh. S. sections 10-12, 15-18 of the Indian Contract Act [of 1872]. In I. L. R. 3 Bom. 29 at p. 104 'strimatta' in Br. (S. B. E. vol. 33 p. 307 v. 23) is taken as one word and rendered 'under female or aphrodisiac influence', which is not correct as shown by the texts of *Viṣṇu* and *Kāṭ.*, where the two words are separated by other words.

were allowed to overrule the force of documents there would be confusion and an end to all written transactions⁴⁴¹. If there is a conflict among documents then a *jānapada* document (written by a scribe and attested) is superior to one written in the hand of the executant himself and a public document is superior to a *jānapada* one (Vyāsa q. by Sm. C. II. p. 66, S. V. p. 122).

Yāj. II. 91, Nār. IV. 146 and Kāt. 312 (q. by Aparārka p. 687) prescribe that when a document is in another country or when it is illegibly written, when it is lost or its letters have become indistinct (by lapse of time or other causes) or it has been stolen or is crushed or burnt or shattered into pieces, another document may be caused to be written (if both parties agree); but if they do not agree and the contents have to be proved or if the executant denies his signature, then Nār. IV. 142 and Kāt. (282 q. by Sm. C. II. p. 63) say that time may be given to bring it from the foreign country or the contents may be proved by the evidence of the attesting witnesses or of the scribe or of those that have seen it. This shows that the *śmṛti* law required the production of the document itself as primary evidence, but allowed secondary evidence only in exceptional cases.⁴⁴² If a document belonging to one man is produced by another the latter has to explain his custody of it⁴⁴³ (Vyāsa q. by Aparārka p. 690, Sm. C. II. 66). Kāt. (308 q. by Sm. C. II. p. 65) says⁴⁴⁴ that just as the reflection of a person or thing made in a mirror is seen as if it were real though it is unreal, so clever people can fabricate documents resembling (the genuine writing of a person). Vyāsa (in Aparārka p. 688, Sm. C. II. 65) and Br. (S. B. E. vol. 33 p. 307

441. न द्विषोः साक्षिभिर्वापि हीयते लिखितं कश्चित् । लेखपत्रैः सदा अहो ह्यहो नान्येन हीयते ॥ तदुक्तविलेख्येन तद्विशिष्टेन वा सदा । लेखकिका निरस्येत न साक्षिशपथैः कश्चित् ॥ कात्या. q. by अपरार्क p. 692; वाचिकैर्देवि सामर्थ्यमखराणां विहन्यते । क्षिप्रानां सर्वनाशः स्वादनवस्था वा जायते ॥ संवत् १. q. by अपरार्क p. 692. Compare sec. 92 of the Indian Evidence Act. The poet Māgha gives expression in his own laconic way to the same idea in निर्धारितैर्लेख्येन खलुस्त्वा खलु वाचिकम् । शिशुपालवध II. 70.

442. Compare sec. 63 and 65 of the Indian Evidence Act about the meaning of secondary evidence and the circumstances under which it can be given.

443. यथाप्यस्य कृते लेखमग्नहस्ते मनुश्यते । अवश्यं तेन वक्तव्यं यद्वरदायमर्चं ततः ॥ व्यास q. by अपरार्क p. 690.

444. वर्णशब्दं यथा विष्णुमसस्तद्विष दुरुपते । तथा लेखस्य विष्णुनि कुर्वन्ति कुसता जनाः ॥ कात्या. in स्मृतिच. II. 63, एष. म. p. 148, एष. श्रि. p. 91 (it attributes the verse to नारद).

vv. 20-21) say the same thing and add that documents have to be carefully scrutinized and that no certain conclusion can be established by documents alone (in every case), that women, minors and illiterate persons are deceived even by their relatives by the fabrication of documents bearing the names of these (women and others) and that this has to be investigated with skill. When there is a doubt about the genuineness of a document, it can be established by comparison with other documents admitted to be written or signed by the same person, by ratiocination, by the probability of the two parties being together at the time of the transaction, by citing the attesting witnesses,⁴⁴⁵ by the peculiarities or flourishes in writing certain letters or making certain signs (in the writing questioned and in other admitted writings), the previous transactions between the parties (or their subsequent conduct), and the source of the acquisition of the subject matter in dispute (Yāj. II. 92, Viṣṇu Dh. S. VII. 12, Nār. IV. 143-144, Kāt. 283 q. in Mīt. on Yāj. II. 92), Viṣṇu Dh. S. (VII. 13) and Kāt.⁴⁴⁶ 285-286 (q. by Aparārka pp. 689-690) prescribe that if the debtor, creditor, witnesses or the scribe be dead the authenticity of the document has to be ascertained by (a comparison of the signatures on the disputed document) with other specimens of their handwriting or signatures or other documents executed by the debtor. Kāt. 287 (q. by Aparārka p. 689, Sm. C. II. p. 64 and Par. M. III. p. 134) states the striking⁴⁴⁷ rule that when a document bears the royal seal, that document is presumed to be authentic, even though all the three (viz. the debtor, the witnesses and the scribe) are dead. This shows that documents bearing the king's seal or that of royal officers were regarded as *prima facie* genuine and this rule is analogous to the provisions in sec. 79 of the Indian Evidence Act and sections 59-60 of the Indian Registration Act. That even copperplate grants were sometimes forged is clear from the reference in the Madhuban plate of Emperor

445. Vide sec. 68 of the Indian Evidence Act about the proof of attested documents.

446. अथ पञ्चत्वमापन्नो लेखकः सह साक्षिभिः । तत्पत्रहस्तादिभिस्तेषां विद्युत्पत्रेषु च संशयः । अलिखितहस्तसन्देहे जीवतो वा मृतस्य वा । तत्पत्रहस्तद्वैतस्यैः पञ्चत्वमापन्न-
निर्णयः ॥ कात्याय. quoted by अ. मा. p. 339, अपरार्क pp. 689-690, परा. मा. III. p. 134; स्मृतिच. II p. 63 ascribes the 2nd to क्षारीत. Compare sec. 69 and 73 (for proof of handwriting by comparison) of the Indian Evidence Act.

447. मनुदेवि यदा लेखे सृताः सर्वेपि ते सिधताः । लिखितं तत्पत्राणि तु मृतेष्वपि हि तेन च ॥ कात्याय. quoted by अपरार्क p. 689, स्मृतिच. II p. 64.

Harṣa (E. I. VII. p. 155, 158), and from the Tārāchandi Rock Inscription (in Bihar) of Mahānāyaka Prātāpādhaivaladeva (in E. I. XX. Appendix No. 340) of *sabukt* 1225 which declares that a certain copperplate purporting to be issued by Vijaya-candra of Kanoj was forged. Vide Fleet in I. A. vol. 30 pp. 201-223 for many forged grants. Verses (variously attributed to Kāt. or Brhaspati by the digests) state that when a loan (recorded in a document) has not been expressly claimed by the creditor able to claim from a debtor who is able to pay off and who is at hand, the document loses its validity because a suspicion arises that the debt has been paid off and that a document executed more than thirty years before which has never been seen (by any body) nor read out (by the creditor to any body) does not attain validity even though the witnesses on it are living. Nār. IV. 141 is very similar to this last. Kāt. 298-299, 301 (q. by Par. M. III. 136, Mit. on Yāj. II. 24. Aparārka p. 690-691) prescribe that if no objection is raised for twenty years as regards a patent fault in a document of debt or pledge or of the settlement of boundaries, then the document ceases to be voidable. Kāt. 275 and Br. (S. B. E. vol. 33 p. 302 v. 25) both quoted by Aparārka p. 671 and V. P. p. 122 require that the latent defects in documents or witnesses must be declared (pointed out) by the disputant at the (proper) time (i. e. when they are produced), while patent defects may be considered by the *sabhyas* at the time (of the consideration of the evidence) by reference to the rules of the śāstra. Yāj. II. 93-94, Viṣṇu Dh. S. VI. 25-26⁴⁴⁸ prescribe that when a debtor pays part of a debt, the debtor should write on the back of the document how much he paid or the creditor may hand over to the debtor a writing of receipt signed or written by himself, particularly when the original document is not at hand, and when the whole debt is paid or the contract is fully performed the creditor should tear off the document or should execute another document in order to make clear the fact of satisfaction.

The fabrication of royal edicts and private documents was so much condemned by the sentiments of society that Manu IX. 332 and Viṣṇu Dh. S. V. 9-10 prescribe the extreme penalty of death for such offences as in the case of the murder of women, minors and brāhmanas. Yāj. II. 295 (= Matsya 227. 202)

⁴⁴⁸. लिखितार्थं मन्त्रिभ्यः लिखितं पाठयेत् । असमग्रदाने देवयामनिषादे चोचर्येण स्वलिखितं दद्यात् । विष्णुधर्मसूत्र VI. 25-26.

prescribes the highest fine for him who adds to or writes less than what was intended to be declared in a royal grant or edict. Śaṅkha also prescribes death or the excision of a limb for fabrication of documents (q. by V. R. pp. 298, 369).

For detailed treatment about documents in ancient and medieval India two papers in the *Annals of B. O. R. Institute*, vol. IX, pp. 49-81 and in the *Journal of the Andhra Historical Society*, vol. 18 pp. 203-232 may be consulted.

CHAPTER XII

BHUKTI OR BHOGA (possession).

According to Gaut. X. 39 a man becomes an owner by inheritance, purchase, partition, seizure (appropriation of forest trees and other things which have no owner) and finding (i. e. appropriation of lost property the owner of which is unknown). Gaut. (X. 40-41) adds that in the case of brāhmanas acceptance (of a thing donated) is an additional mode (of becoming an owner), that conquest in the case of a ksatriya and gain (by trade or labour) in the case of a vaiśya or śūdra are also additional modes. Vas. 16. 16 mentions eight modes. Br. (quoted in V. P. p. 153, Aparārka p. 635, S. B. E. vol. 33 p. 309 v. 2) mentions seven modes of acquiring immovable property viz. by learning, purchase, mortgage, valour (i. e. conquest), through the wife (as dowry), inheritance (from an ancestor) and succession to an issueless kinsman. Nārada (q. in Sm. C. II. p. 70) mentions the same except mortgage. None of these expressly says that long possession is by itself a source of ownership. Great divergence⁴⁴⁹ has prevailed throughout the centuries among the sages and digests about the relation of title and possession and about the length of possession necessary for making a person secure in his right to property by reason of possession. Possession (*bhukti*) may be with title (*sāgamā*) or without title (*anāgamā*). Āgama means 'origin' or 'source of title' such as purchase or simply 'title'.⁴⁵⁰ Manu VIII. 200, Yāj. II. 27, Nār. IV. 84 employ that word in that sense. Vide Kāt. 317 (q. in Sm. C. II p. 73 and Par. M. III p. 141). If property is held in one of the modes of acquiring ownership stated above and there is also possession, one's right to that property is indefeasible (Nār. IV. 85, Br. q. by Sm. C. II. p. 70, S. B. E. 33 pp. 309 and 312 v. 3 and 22), but possession without a clear title

449. Vide *Lalubhai v. Bai Anrit* I. L. R. 2 Bom. 299, 304 ff., where Mr. Justice West enters on an elaborate analysis of the doctrines of the Mit. and the Vyavahāramayūkha on title and possession.

450. स्वप्नेहेतुः प्रतिग्रहकपादिः आगमः । मिता. on पा II. 27; आ सम्पत्तयाम्ने माप्ते स्वीक्रियते येन स आगमः कृपादिरिति स्वप्नहारमातृका । आगमः साक्षिपदादिकमिति दीपकल्लेका । आगमो धनार्जमोपायाः कृपादिरिति मेघिनाः । स्वप्नहारमत्तप p. 225.

does not lead to (or ripen into) ownership⁴⁵¹ (with certain exceptions to be noted later on). Vyāsa and Pitāmaha⁴⁵² declare that possession in order to be valid must have five characteristics viz. it must have title behind it, must be of long standing, unbroken, free from protest (by another person) and in the presence (i.e. before the very eyes) of the opponent (q. in Mīt. on Yāj. II. 27 and Aparārka p. 635). Even title, if not accompanied by some slight possession, has no strength, while title is stronger than possession not handed down hereditarily (Yāj. II. 27). Nār. IV. 85 states that possession becomes strong when backed by clear title. These passages present some difficulty and make title and possession depend on each other. Nār. IV. 77 states that even if there be a document or witnesses to support a man's title, when there is no enjoyment, particularly in the case of immovable property, there is no validity. All that is meant is that a transfer without possession though under a deed or before witnesses is risky and that title and possession lend support to each other as stated by Nār. IV. 84-86, Br., Hārita and Pitāmaha.⁴⁵³ Nār. (IV. 86-87) declares that one who pleads mere possession and no title at all should be considered a thief on account of his putting forward the deceptive plea of possession (which even a thief can assert) and that the king should punish as a thief one who enjoys a property even for hundreds of years without title. All that this last verse means is that the person in possession must prove legal origin or such a long possession that there is no possibility of an inference that the possession

451. भुक्त्वा केवलं नैव भुक्तिः सिद्धिमवाप्नुयात् । आगमेनापि भुक्तेन द्वाभ्यां सिध्यति सांप्रदायः ॥ बृह. q. by स्मृतिच. II. p. 70.

452. सागमो दीर्घकालव्यवहितोऽपरवोन्निवृत्तः । परार्थिर्निधानञ्च पञ्चाङ्गो भोग इत्यपेक्षः ॥ पद्मसू. q. by स्मृतिच. II. p. 71. This is also cited by the Mītā, on Yāj. II. 27 (without name). पितृमह has almost the same words सागमो दीर्घकालो च विनिश्चयपरवोन्निवृत्तः । परार्थिर्निधाना च भुक्तिः पञ्चविधा स्मृता ॥ स्मृतिच. II. p. 70.

453. पितृमहपञ्चविधाधामनिश्चयदीर्घमपेक्षमात् । यानि सप्तविधं भोगः सागमः सिद्धिः साप्नुयात् ॥ बृह. in स्पष्ट. नि. p. 126, स्प. म. p. 133; य मूलेन विना शाखा अन्तरिक्षे यरोहति । आगमस्तु भवेन्मूलं भुक्तिः शाखा प्रकीर्तिता ॥ हारीतः । नागमेन विना भुक्तिर्नागमो भुक्तिर्विहितः । तयोर्न्योन्यसम्बन्धात्पञ्चाङ्गस्यैव व्यवस्थितम् ॥ पितृमह, both q. by स्मृतिच. II. p. 70; स. नि. p. 131. The स्पष्ट. नि. which regarded *tripurnar-bhoga* as equal to 60 years (p. 128) briefly explains the strength of title and possession as follows: अक्षयिकलावागममावहत्य भोगस्य तदास्तुत्यात् । द्वितीये भोगागमयोः साम्यम् । तृतीये भुक्तेः प्रागल्भ्यम् । चतुर्थे दुष्ये पञ्चाङ्गयोग एव प्रमाणं नागमापेक्षेति सिद्धम् । p. 132.

of his ancestor originated is wrong. Delivery of possession was the principal mode of transferring ownership in ancient times in almost all systems of jurisprudence and so possession was given great weight as evidence of ownership.⁴⁵⁴ The Mit. on Yaj. II. 27 makes the position clear. In the case of a gift or sale there must be the cessation of the ownership of the transferor and the arising of the ownership of the transferee. This last occurs only when the transferee accepts the property and not otherwise. Acceptance is mental, vocal and physical (i. e. the acceptor makes a resolve to accept, says that he accepts and takes physical possession). These three may exist in the case of such movable articles as gold, clothes &c. But in the case of a field physical acceptance is not possible except by enjoying the fruits or profits thereof. Therefore in order to make a gift or sale perfect there must be some slight possession at least. In the absence of such possession mere title is weak. Title may succeed against the man in possession who has no title and who has not been in possession for the prescribed period (such as three generations). If the possessor proves possession for that period he will succeed against one who has bare title and no possession whatever. If it is known or proved that a man purchased from A but got no possession and that another purchased from A subsequently and got possession (but was not in continuous possession for the prescribed period) the prior title though without possession will prevail over the later one, acc. to Yaj. II. 23. But when it is doubtful as to which title is prior and which posterior the one with possession will prevail. Where the possession has been uninterruptedly with a man's ancestors for three generations he will succeed against one who has bare title. Therefore possession was not absolutely indispensable for transfer even acc. to the Mit. and other works, but title without possession was risky and so possession was insisted upon as it was 'nine points of law'. It follows, acc. to the Mit., that (1) when possession was comparatively of short duration and not supported by any title much weight was not attached to possession and title by itself would prevail against it, that (2) continuous possession for three generations (though there is

⁴⁵⁴ In English Law until the year 1845 (8 and 9 Vic. chap. 106, sec. 2) land could in theory be conveyed in no other method than by delivery of possession and no deed or conveyance was in itself of any effect. Vide Salmond's Jurisprudence, 9th ed. 1937, p. 520.

nothing to show there was title to begin with) will prevail over a mere documentary title and that (3) a prior title with less than the possession for three generations (but with some possession) succeeds over a later title accompanied by possession. Long possession was assumed to have originated in legal title, although owing to lapse of time it was not possible to prove the origin.⁴⁵⁵ The main controversy has raged round the question of what is long possession. Yāj. II. 24 literally translated means 'loss of land results in twenty years when it is enjoyed by a stranger before the owner's very eyes and without any protest from him and loss of chattels (results under similar circumstances) in ten years'. Manu VIII. 147-148 and Nārada IV. 79-80 have two verses in common which mean 'If the owner of anything silently looks on (i.e. raises no protest) when it is being enjoyed in his presence for ten years by strangers he does not deserve to recover it (i.e. he loses the thing). When the owner is not an idiot nor a minor and his property is enjoyed within his sight then the property being lost by his conduct (*vyavahāra*) comes to belong to the enjoyer'. Gaut. XII. 34 has almost⁴⁵⁶ the same words as Manu VIII. 148. Śāṅkha (in V. R. p. 208) also refers to ten years. These passages apparently mean that at the end of 20 or 10 years' adverse possession by the wrongful possessor the ownership of the original owner is lost and the wrongful possessor becomes the owner. But there are several other smṛti passages where it is said that possession even for a hundred years originating in wrong cannot confer title and much longer periods are required for the loss of ownership and the acquisition of ownership by prescription. Vide Nār. IV. 86-87 cited (on p. 318 above). Nār. (IV. 89) himself says elsewhere that possession requires

455. Under the Law of England 'Time immemorial or time whereof the memory of man runneth not to the contrary' was considered to include the whole period of time from the reign of Richard I. This was a very inconvenient and absurd rule which was abrogated by sec. 1 of the Prescription Act of 1832 (2 and 3 William IV, chap. 71) whereby the rights to any land became absolute and indefeasible by sixty years' uninterrupted enjoyment before that Act (except when the enjoyment was by some consent or agreement made under a deed). By French Law the time of memory was held to extend for one hundred years as done by the Mā. and other Sanskrit digests. Vide Salmond's Jurisprudence (9th ed. of 1937) p. 263-note 7.

456. अजहायोगद्वयने दशवर्षमुक्तं परैः सन्निधौ भोक्तुः ॥ शौ. XII. 34; ग्रामवपश्च दशमेणिचिरोपे दशवर्षमुक्तमप्यत्र राजविनयात् । शङ्ख ९. In vi. r. p. 208.

to be supported by title only during *smṛtakāla* (during human memory), but in cases beyond human memory possession continued successively for three generations (or ancestors) is proof of ownership even in the absence of a document (or other title). Viṣṇu Dh. S. V. 187 is in similar⁴⁵⁷ terms. The Mī. on Yāj. (II 27) says that *smṛtakāla* is a period of 100 years, as the Veda declares that the span of a man's life is 100 years. For a hundred years it is possible for witnesses to depose to the origin of possession. So if there is possession for less than one hundred years, oral evidence can be adduced for establishing its origin, and title will have to be proved by the possessor and if no oral evidence is adduced to prove title, it is a case in which it may be held as certain that there was no title to begin with. Mere possession is not enumerated by sages like Gautama among the means of acquiring ownership. As the Sarasvatīvilāsa (p. 124) puts it, long uninterrupted possession only leads to an inference that it originated in title acquired by sale, gift or the like i. e. there arises a presumption of lawful origin⁴⁵⁸. Therefore in order to enable a man to rely on possession alone as proof of ownership it must extend uninterruptedly over 100 years (acc. to the Mī.). The *Smṛticandrikā*⁴⁵⁹ (II. p. 72) accepts this meaning, only requiring 105 years' possession instead of 100 years'. Acc. to a *smṛti* quoted by it each generation means 35 years and so when Nārada requires possession for three generations 105 years are meant (acc. to Sm. C.). Viṣṇu Dh. S. V. 187, Kat. (327) also hold that continuous enjoyment for three generations makes the fourth generation owner of the land. Kat. (321 q. by Mī. on Yāj. II 27, Aparārka p. 636) states 'in cases falling within the memory of man it is desirable that possession must be accompanied with title

457. त्रिभिरेव तु वा श्रुत्या दुर्बलैर्पूर्वभावेपि । लेख्यभावेपि तौ तत्र चतुर्भः सम-
वाप्नुवन्तः । विष्णुधर्मसूत्र V. 187. The same is ascribed to both विष्णु and
कारवायन by स्व. भा. p. 341. The स्व. भा. p. 130 ascribes it to अग्निमित्र.

458. श्रुतिरपि केचिद्विशेषणैर्दुर्बला स्वल्पैस्तुल्यकपदानादिकमप्यभिचारादनुमाप-
यति । अल्पधातुरप्यमाना कल्पयत्यनुमानेऽर्थापत्तौ शान्तमर्थवतीति प्रमाणमेव । सरस्वती-
विलास p. 124; these words are apparently taken from the स्व. भा. p. 73.

459. एतदुक्तं भवति । स्मरणयोगे पञ्चाधिकशतवर्षपर्यन्तातीतकालमध्ये पारम्पर्य-
श्रुतिः स्वतःप्रामाण्यवतामनमूलैव स्वत्वे प्रमाणमिष्यते । स्वतः स्वमूलावतत्पर्यन्तातुल्यव्या-
प्यध्वमानत्वात् । स्मरणयोगे तुनः पञ्चाधिकशतवर्षपर्यन्तातीतकालात्प्राचीनकाले पारम्पर्य-
स्वदार्ढ्यावतत्पर्यन्तातुल्यव्याप्यध्वमानत्वात् । अतः प्रमाणमिति । स्मृतिश्च
II, p. 71.

(in order to be proof of ownership as to land); but in cases beyond the memory of man possession extending over three generations in succession (is independent proof of ownership), since there is no certainty that there was no title (to begin with). Vide also Br. (in S. B. E. vol. 33 p. 313 verses 26-28). 'Three generations' is a vague expression. The great-grandfather, the grandfather and the father of a man may die in the space of ten years and if the great-grandfather took possession wrongfully and all died within ten years of the time of taking possession one after another, the fourth in descent might urge that there was possession for three generations and that he had become owner. Therefore Kāt. in another verse (318, q. by Aparārka p. 636 and V. P. p. 155) laid down that unbroken possession for three generations extending over sixty years becomes firm (independent means of proof of ownership). Thus *triparava-bhoga* or *pūrvakramāgata-bhoga* (in Yāj. II. 27) means the same thing as possession continuing from a time beyond human memory (*amārta-kāla*) and is equal to 60 years acc. to Kāt., Vyāsa and a few other smṛti writers⁴⁶⁰. Nārada (q. by Aparārka p. 636) says that as regards possession one generation means twenty years, while Br. (q. by Sm. C. II. p. 72) says it means thirty years. It will be noticed from the above that early authors like Gaut., Manu., Yāj. appear to lay down '20 years' adverse enjoyment of land as sufficient to create ownership, while other and comparatively later authors like Nār. and Kāt. require sixty years enjoyment. In order to remove this conflict and following the maxim that apparently conflicting texts should be reconciled as far as possible, the writers of commentaries and digests from Viśvarūpa and Medhātithi (on Manu VIII. 148) downwards proposed various interpretations of Yāj. II. 24 and similar texts. Some lay emphasis on possession and others on title. There are at least three explanations. Aparārka (pp. 631-632), Kullūka and Raghunandana take the literal sense and say that on 20 years' adverse possession there is loss of ownership (i. e. there

460. मुक्ता पैतृकी मुक्तिः पैतृकी चापि संमता । विभित्तेरविच्छिन्ना स्थिरा वक्ष्या-
भिद्वी मता ॥ कात्या०, वर्षाणि विदधति मुक्ता स्वामिनाऽप्यनुता सती । मुक्तिः सा पैतृकी
मुक्तिर्द्विगुणा च द्विपौदरी । विपौदरी च त्रिगुणा न तत्रान्येष्वप्यवयवः ॥ नारदः, both quot-
ed by अपरार्क p. 636, and स्व. प. p. 155 which ascribes the verses वर्षाणि &c. to
व्यासः, परा. III. p. 142 also ascribes it to व्यासः, यतिवामहेन पदमुक्तं तत्पुत्रेण विना
च तत् । तौ विना वरय विना च तस्य भोगश्चिपौदरः ॥ श्वेत प. in व्यवहारमातृका
p. 341.

is *vyavahāni*)⁴⁶¹. The 2nd explanation is that the meaning of Yāj. II. 24 is that after 20 years' enjoyment by a stranger, if the owner brings a suit and relies on a document in his favour, he runs the risk of being unable to prove his ownership barely on the strength of the document, since it is possible to argue that, even though he had a document, by his silence he acquiesced in the stranger taking possession and tacitly consented to it. Therefore all that Yāj. II. 24 means or recommends is that an owner should not be negligent (*upekṣā*) or should not remain silent when a stranger takes wrongful possession. This view was first started by Visvarūpa among extant writers and it approaches the modern idea of requiring vigilance in the assertion of one's rights⁴⁶²; that is there is only loss of the suit (*vyavahārahāni*). This view lays emphasis on a verse attributed to Nār. and the word *vyavahāra* in it and in Manu VIII. 148 and Nārada IV. 80, where the word means lawsuit also, the idea being that the sages declare only what would happen or be decided by the judges in a law court and do not intend to say that the decision would be just or righteous from the higher or the moralist's point. The third view is that of the Mī. (followed by the Vyavahāramayūkha, Mitrāmīśra and several others) which⁴⁶³ explains that the loss is not that of the ownership of the thing itself but of the produce of it (there is only '*phalabhāva*') i. e. if without protest the owner allows a stranger to remain in possession before his very eyes for twenty years and then he brings a suit, he may succeed in getting back his land but he would lose his claim to the profits of the land. The Mī., the Vyavahāramātrkā and V. P. (pp. 157-165) contain very

461. तस्याद्याज्ञवल्क्याद्विषयनाद्विंशतिवर्षदशवर्षादिकालेभ्यो एव स्वत्वं जनयति तथा कालप्राप्तिवलेन बीजमङ्गूरं जनयति तरुश्च कुसुममिति स्वामिना चापरिवर्त्तयेति शास्त्रोक्तकालीनमोक्षात्स्वाम्यस्यैव नवति यथा जपेन राज्ञः परराष्ट्रघने इति । एवमेव श्रीकरवालकपोतोऽकम्बदेवमहश्चतुष्टयानि कुलकम्बद्वयश्चत्वरमन्त्रिवर्षमानोऽप्यायमृत्युः । एवमहरोरपि तद्वन्नेव । एतद्विषयवचनाम्यस्यैव व्याख्येयानि । स्वयम्हारतत्त्वं p. 223; तस्माद्वाचादित्यतिरिक्तस्य यथाकृत्या मुक्त्या स्वत्वसिद्धिः । अथार्क p. 632.

462. हानिविधाय लिखितवलेनाभियन्तव्यमाधनमाकर्षयामिहेतुः । न पुनर्भुग्वाद्यौ तत्काले वा स्वत्वस्य । नोपेक्षामात्रेण स्वत्वमप्येति युक्तत्वात् । स्मृतिच. II. p. 68: परैर्भुतयमानं नोपेक्षणीयमित्यभिप्रायः । ... उपेक्षानिविधमात्रं चेति । हानिविषयं तु मित्रदामाचार्येनोपेक्षकस्य स्वयम्हारमनुस्यधीयतामाचक्षति कलं तदेव व्याच युक्तम् । विवक्षय on वा. II. 26; उपेक्षां कुर्वतस्तरुं तूर्णार्थमस्य लिखतः । कालेतिपक्षे पूर्वोक्तो स्वयम्हारो न सिध्यति । भास्व. q. by अथार्क (p. 632); स्मृतिच. II. 68.

463. तस्मात्स्वाम्युपेक्षाकालस्यापराधवृत्त्याश्च वचनाद्विज्ञातेकस्य कलं नष्टं न लभ्य इति विधानम् । मिता.

elaborate discussions on Yāj. II. 24: but considerations of space forbid any further reference to them. The V. M.⁴⁶⁴ connects Yāj. II. 24 with the preceding verse (viz. that in mortgages, gifts and sales a prior transaction prevails over a later one) and remarks that this verse (Yāj. II. 24) says that if a person after a gift, sale, or mortgage to him allows the property to remain with the seller, donor or mortgagor, who subsequently transfers it to another with possession and the latter holds it for twenty years, then the first dealing though prior is of no avail (as it is not accompanied with possession for 20 years). Śrīkara (as stated in the Vyavahāramātrkā) tried to reconcile the conflicting *smṛti* texts by holding that in twenty years the real owner lost ownership if he was present and did not protest while a stranger was in possession, but passages speaking about possession for three generations (or sixty years) applied only where the owner was absent. The Mit. and others point out that Yāj. II. 24 (who employs the words 'paśyataḥ' and 'abruvataḥ') conveys that if a stranger takes possession while the owner is absent or if the owner protests, then even 20 years' possession does not lead to the loss of anything. The text of Nār. IV. 87 quoted above (p. 318) shows that the sage held that possession for several hundred years even would not avail the possessor if it is certain or established that the possessor had no title at all to begin with or that his possession started wrongfully. This text is emphasized by those who favour title and want to discourage persons benefiting by their own wrongdoing. But there are other *smṛti* texts of a contrary tenor. For example, Nār. IV. 91 himself says 'whatever has been enjoyed even unlawfully for three generations (i. e. by three ancestors) including the father cannot be recovered by the owner from the person (who is the 4th in succession) because it has gone through three lives in succession'; a text of Hārīta states 'what has been enjoyed by three prior ancestors without any title whatever cannot be recovered back (from the present holder, who is 4th), since it has descended successively through three generations'. These two are relied upon by those who hold long possession as leading

464. अपि तस्मार्थः । कीर्तिहृतमतिदृष्टीर्मांविधनमुनिगतः परस्व दशविंशतिवार्षिको धेनः समाकारणजटपौण्ड्रपादमात्रेणुपेक्षितवाङ्मयानि कुरुते । स्वोपभोगार्थं तेन कयास्तस्व स तेनोपेक्षितत्वादिति सुमीनामभिप्रायः ।...तस्मात् 'पश्यतोऽब्रुवतः' इति वचनं 'आधी यति-यते कीर्ति' इत्यस्यापवादकम् । आधिपत्यकपणपतिग्रहकर्तृणामाहितकीर्तियुद्धेतेषु नवाब्दा-दिषु पोष्येषु दशवर्षाणि परमोक्तोपेक्षया स्वत्वदानिः । यूनौ तु विंशतिवार्षिकौ । तेन वचना-कारणत्वेनावधारिता उपेक्षा कार्यभूता स्वत्वदानि ज्ञापयति । स्ववह्मन्नुक्ता p. 348-49.

to an inference of title (*tripurusa-bhuktivādinah*, as Medhātithi on *Mam* VIII. 148 calls them). These like the *Vyavahāratattva* and *Vivādacandra*⁴⁶⁵ who rely solely on possession boldly say that long possession even originating in wrong leads to ownership. Medhātithi says 'there can be no memory of the origin of title when there has been possession for hundreds of years and (if title had to be proved for the origin of such possession) a king may resume villages enjoyed by ancient temples, brāhmanas and mathas; therefore ancient possession is evidence of ownership because it makes it extremely probable that the ancient possession originated in gift or the like'. The *Mit.* on *Yāj.* II. 27 (which is *śatavarādi*) refers to all the three views, refutes the first two and accepts the view of loss of profits. It does not literally interpret the texts of *Hārta* and *Nārada* quoted above, takes them to be over-statements and intended to convey that continuous possession for over three generations cannot be interfered with even if there is no clear proof of the origin of title. In modern India under the Indian Limitation Act (IX of 1908) the tendency is to prescribe the very short period of twelve years for adverse possession in order to defeat a title, following the English Real Property Limitation Act of 1833 (3 and 4 William IV chap. 27), sec. 2 of which insisting on vigilance by every one about one's rights however prescribes the period of 20 years within which to bring an action for recovery of land. Modern case law has rather gone too far and sets a premium on wrongful possession by holding that it is not necessary that adverse possession should have been brought to the knowledge of the real owner⁴⁶⁶. Ancient Hindu lawyers put down the tendency to usurp another's property and placed many obstacles in the way of the wrongful possessor.

It may be noted that there were a few rare texts that referred to very short periods for possession causing loss of

465. अन्वयेनापि पित्रादिचरमुक्तो भोगः प्रमाणमेव—अन्वयेनापि दृष्टमुक्तं पित्रा पूर्वतरैश्चिन्मिः । न त्वच्छब्दमपाकर्तुं कर्मादिपुरुषागतम् ॥ (आश्व १. ११) इति वचनात् । विवेति पित्रा सहोत्तरः । अन्वयेनापि अन्वयानिच्छदेनार्थः । तेन वस्तुतो भोग इत्यावासीति नाम्नायमभोगः प्रमाणमिति केचित् । अन्ये तु वचनबलादुर्वविषोऽन्वयमभोगोऽपि प्रमाणमेवापातुः । चरमः पक्षोच समीचीनः । जिभिरव वद्वा तुका उरुवर्धुर्धवापि । इत्येवाभवेपि वा तत्र चतुर्थः समवाप्नुयात् ॥ इति वचनात् । निवादचन्द्र p. 134. Vide note 457 above for the verse जिभिरव.

466. Vide *The Secretary of State for India v. Debendran Lal Khan* 61 I. A. p. 78 at p. 82 (=36 Bom. L. R. 249) and *Srischandra Nandy v. Baijnath*, 62 I. A. 40 at p. 44 (=37 Bom. L. R. 323).

title, viz. 3 years for immovable property (provided there was no permissive origin, *kṣamūlīn*) or one year for corn, cattle and other movables⁴⁶⁷. This idea being opposed to innumerable texts was explained away as merely conveying the great importance of possession. Marici states⁴⁶⁸ that cows, beasts of burden, ornaments that are borrowed through friendship should be returned within four or five years, otherwise the owner would lose them. This is opposed to Manu VIII. 146 and other texts and so is explained as being applicable only if there is no sufficient cause for allowing them to remain with the borrower. The ancient Roman Law was very like this. Before Justinian the Roman Law gave the ownership of a thing by quiet possession *bona fide* and founded on good title if maintained during one year over movables and during two years over immovable property⁴⁶⁹. Justinian altered this and provided that possession during three years gave ownership of movables and possession during ten years (if parties resided in the same province) or during twenty years (if they did not) gave the ownership of immovable property.

Br. (S. B. E. vol. 33 p. 314 verse 31) lays down the proposition that if a person has title and is already in possession and is dispossessed by another then he may succeed in a lawsuit on the strength of his prior possession provided the dispossessor does not establish continuous possession for three generations⁴⁷⁰. This is similar to a suit in ejectment contemplated by Art. 142 of the Indian Limitation Act.

Br. (S. B. E. vol. 33 p. 310 v. 11) and Kāt. 335 (both quoted by Aparārka p. 637, V. P. p. 166) state that what is enjoyed by a man's agnates and cognates and his own people does not pass to their ownership by their mere possession; one should regard

467. अत्र बृहस्पतिर्विशेषमाह । त्रिवर्षं सुव्यते येन समग्रं भूस्वकारितम् । तस्य सा भाग-
हर्तृणां समाहितकृत् न चेददेव । अतुःपाद्वनवाग्नादि वर्षाद्वाग्निमवाग्नात् ॥ एतच्चाने-
मुकेराद्वार्यं पञ्चमुत्ते (न 1) व्याख्येयं बृहस्पतिस्तथादेति वदन्नाह । स. वि. p. 135.
Vide स्वय. नि. p. 132 from which this is taken, which introduces these verses
with the words 'अत्र पञ्चाध्याय्या बृहस्पतिः'. It is probable that the work of
Br. on vyāvahāra had five adhyāyas.

468. धेतुवाग्नाद्वृत्तं पाचितं धीतिकर्मणा । अतुःपाद्विकं देवमग्नया हानिमाप्नु-
यात् । मरीचि in स्मृतिच. II. 69, परा. मा. III. p. 148 (reads धनवाग्नाः).

469. Vide Sandar's Introduction to the Institutes of Justinian, sec. 72.

470. सप्तविंशत्येव समग्रं भुक्तिः प्रमाणमित्याह बृहस्पतिः । भुक्तिर्भलवती आग्ने-
होविनिष्ठा चिरन्तनी । त्रिविधत्वादि हि सा ज्ञेया या तु पूर्वपमाधिना ॥ इति । परा. मा.
III. p. 144-145, स्मृतिच. II. p. 74.

possession (as leading to ownership) in cases other than these. Pitāmaha states that possession by a stranger is powerful, but possession by members of one's own family has certainly not the same force⁴⁷¹. This appears to adumbrate the principle of modern law that possession by one co-owner or one tenant-in-common is ordinarily the possession of all co-owners and the mere fact that the profits of a property have been enjoyed by only one co-heir or tenant-in-common for many years does not by itself amount to the ouster of the other tenants-in-common⁴⁷². It is stated in Gaut. XII. 35 that property which is enjoyed for a long time by a śrōtriya, an ascetic or a king's officer is not lost to the owner by that enjoyment, since the owner may have thought that he would reap long-enduring spiritual merit by the first two enjoying this property (such as a vacant house) or that he might be prevented from asserting his right from fear (of the royal official). Compare Br. (S. B. E. vol. 33 p. 311 v. 12).⁴⁷³ Manu VIII. 149 (= Nār. IV. 81 and Vaa. 16. 18), Yaj. II. 25, Br. (S. B. E. 33 p. 312 v. 21), Kāt. (330) state the following exceptions to the rule of loss by long possession; a mortgaged or pledged property, boundary, minor's property, an open deposit, a sealed deposit, women (female slaves), the property of the king i. e. (of the State) and the property of a brāhmaṇa learned in the Veda are not lost by the possession of another (for twenty or ten years referred to in Manu VIII. 147 and Yaj. II. 24). Manu VIII. 145 provides that neither a pledge nor a deposit can be lost by lapse of time and that both are recoverable even if they have remained long (with the pledgee or depositor). Yaj. II. 25 adds to the above list the properties of Idiots and of women. Nār. IV. 83 emphatically states that women's property (strī-dhana) and state property (land) is not lost even after hundreds of years, when it is enjoyed without title. Kāt. (330) adds to the above list temple property and what is inherited

471. सनाभिभिर्बाणैश्च बहुभुक् स्वजनैस्तथा । भोगाश्च न सिद्धिः स्वाद्भोगमाश्रय कल्पयेत् ॥ कात्याः; अस्मानिना तु बहुभुके बहुशोभापणादिकम् । सुहृदभुक्तुं च न मद्भोगेन हीयते ॥ बृहः; both quoted by अपरार्क p. 637. स्पष्ट. नि. pp. 128-129, स्प. प. p. 166, विवादचन्द्र p. 135 (2nd verse); the first is ascribed to both बृह. and कात्या. by स्पष्ट. नि.; सुक्तिर्वैतली तत्र भोक्ता च यो भवेत् । स्वमीचे भोगिना सुक्तिरे शक्ता शाश्वती युनाम् । पितामह in स्मृतिच. II. p. 69.

472. Vide I, L. R. 46 Bom. 213, 31 Bom. L. R. 199 and 1030 (F. C.), 47 Cal. 274 for this proposition.

473. धर्मोऽस्य भोगिने स्वाद् भवे स्वाद् राजपूदये । स्वेहः सुहृद्व्याप्यवेद् सुकमेतेन हीयते । बृह. in स्मृतिच. II. p. 69, परा. म. III. p. 149.

from the father or mother⁴⁷⁴. All systems of jurisprudence throw protection round the interests of minors, persons of unsound mind and others similarly situated and provide longer periods of possession for loss of their right. The *Mit.* on *Yāj.* II. 25 gives reasons why the several exceptions are made: in the case of a pledge or mortgage the property is enjoyed by the pledgee or mortgagee under an agreement and so there is no fault on the part of the owner if he remains quiet while the property is being enjoyed by the creditor; boundaries between villages can be easily established by such signs as trees (growing on the border), streaks of chaff and coal (buried underground); deposits are entrusted to a person out of confidence for being preserved and not for enjoyment; idiots and minors are ignorant or incapable of understanding their rights; the king being engrossed in numerous state affairs may not be able in time to look into the question about possession of state properties; women on account of their ignorance and timidity may not assert their rights and a learned brāhmana being devoted to learning, teaching and performance of rites and duties may have no time to go to law. In modern times also the law favours minors and other persons as indicated in the note below⁴⁷⁵. *Kat.* (331-334 q. by *Par. M.* III. p. 148, *Sm. C.* II p. 69

474. न भोगे कल्पयेत्कीदृशं देवराजधनं च । वातभोजिपवित्रं च मातुः पितुः
कमात् ॥ कात्या. quoted in *व्य. मा.* p. 351 (reads भोजिपवित्रं च पतिपि पितुः &c.).
॥ इति च II. 69. उपनिधि and निक्षेप are defined by *मातुः* as 'असंशयतमविज्ञातं
ममूढं यत्किंचिदपते । तज्जानीयादुपनिधिं निक्षेपं गणितं विदुः ॥' (q. by *मिता.* on *वा.*
II. 65).

475. Under the Indian Limitation Act, a mortgagor can sue for redemption and possession within 60 years from the time when the right to redeem accrues (Art. 148), though for ordinary suits for possession the period is 12 years; while a pawnor of moveable property has 30 years (Art. 145) from the date of the pawn; if a thing is entrusted to a man for a specific purpose as a trustee then sec. 10 of the Limitation Act provides that no length of time will bar a suit for recovering from him or his legal representatives or voluntary assigns the trust property or its proceeds (*upanidhi* and *niक्षेप* may be examples of trust); a suit on behalf of the Secretary of State for India can be brought within 60 years (Art. 149); sections 6-8 provide longer periods for persons who were minors, idiots or lunatics at the time when their rights were invaded. Under the Real Property Limitation Act of 1833 (3 and 4 William IV chap. 27 sections 16 and 17) a suit could be brought within ten years of the time when the disability ceased in the case of minors, lunatics, idiots, those absent beyond the seas, but no suit can be

(Continued on the next page)

which ascribes them to Nārada) prescribes that in the case of a *brahmacūri*, engaged in his vow of veda study extending over 36 years, and in the case of a man who remains in a foreign country in pursuit of wealth, enjoyment extending over 50 years will alone make him lose his property by the possession of another; that when a person has been a student for a shorter period than 36 years he may get longer additional periods proportionately and that when a person is in jail time does not run against him.

(Continued from the last page)

brought beyond forty years from the starting point. Section 13 of the Indian Limitation Act provides that when the defendant is absent from British India the plaintiff can add the period of defendant's absence to the period prescribed for bringing a suit but does not provide for the rule of *Kāt* which allows a longer period for loss of right when a person (who may have to sue) is absent in a foreign country. Under the Civil Law of Rome the rule was '*nullum tempus occurrit regi*' (lapse of time does not bar the right of the crown). Vide *Vyakanta v. Government of Bombay* 12 Bom. H. C. R. (O. C. J.) I at p. 217 for this rule and its limitation under modern Indian Law.

CHAPTER XIII

WITNESSES (sākṣīṇah).

The word *sākṣīṇ* occurs in the *Śvetāśvatatropanishad*⁴⁷⁶ (VI. 11) where it is applied to the one immanent Spirit of the universe as All-seeing. Pāṇini⁴⁷⁷ V. 2. 91 explains the word *sākṣīṇ* as meaning 'one who has directly seen'. Gaut.⁴⁷⁸ XIII. 1, Kaut. III. 11, Nār. IV. 147 state that when two persons litigate and there is a doubt or discrepancy between the two the determination of the truth in the dispute is due to witnesses. Manu VIII. 74, *Saṃhita*⁴⁷⁹ 68.84, Nār. IV. 148, *Viṣṇu Dh.* S. 8. 13, Kāt. 346 (q. in V. M. p. 317 and V. P. p. 106) provide that a (proper) witness is one who has himself either seen or heard or experienced the matter in dispute. This means that the evidence of a witness must be direct and should not be what is called hearsay. Medhātithi (on Manu VIII. 74) says⁴⁸⁰ that hearsay evidence occurs when a person who hears from another that has himself heard something from another comes forward as a witness and that hearsay is no legal evidence. Manu VIII. 76 prescribes that even though a man may not have been expressly asked or appointed by the parties (in the words 'you are the witness to this transaction'), he is a proper witness when asked as to any matter in dispute that he has himself seen or heard. The only exception to hearsay evidence allowed by

476. एको दृक्; सर्वभूतेषु यदः ... साक्षी चेत्। केचनो निर्मुक्तश्च = श्वेताश्वतराप-
निषद् VI. 11.

477. साक्षीद्वयं सङ्ग्राहम् । वा. V. 2. 91.

478. विदित्वैव साक्षिनिमित्तं शक्यमप्यवस्था । गो. XIII. 1। अस्मादिदं तु साक्षिणा
प्रमाणम् । कौटिल्य III. 11.

479. सुतद्वयानुपूर्वाभात् साक्षिणोऽप्येकदशमः । नारद IV. 147 ; अधिपत्यविमो-
क्तिर्यादृशं तु वदन्ते । तद्व्याख्या साक्षिणो वाच्यमप्यथा न दृष्टवान् ; न कालः । 10 अ. १.
p. 106 ; सम्यग्दर्शनाभावी अवगच्छति धारणात् । सभाषणं 65. 84 ; सम्यग्दर्शनाभावी
अवगच्छति । विष्णुधर्मसूत्र S. 13.

480. सम्यग्दर्शनाभावादादनुमयाच्छ्रवणाच्च सम्यग्दर्शनानुमयाः कर्तव्यः । यत् कुतश्चि-
देकं श्रुतं ततोऽप्येकं श्रुत्वा पराश्रुतं तेन परंपराभावी न साक्षी । मे. on मनु. S. 74 ; अथवा
आक्षेपः वा येन विवादविषयः पूर्वं दत्तः स तत्र साक्षीत्यर्थः । ... तेन च विवादविषयो तेन
दत्तः स तत्र साक्षीत्येवाहुनापि साक्षी अवतीति सिध्यति इतरथा चेत्कादाचादिषु विवादेषु
निश्चितादीनामप्यवस्था साक्ष्यमायमहः । मयूनरत्न (ma). Compare sv. p. 109
for almost the same words.

the *Vistā Dh. S. VIII. 12* is that⁴⁸¹ when a person that is appointed as a witness is dead or gone abroad, those who have heard what he said may give evidence. It has already been stated, (p. 297) that a king was not to delay the examination of witnesses. *Kāt.* (340-341 q. by Aparārka pp. 675, 677, Sm. C. II. p. 92, V. M. p. 331) prescribes that the king (or the chief judge) should himself examine the witnesses that are present (in court) and should consider along with the *śahyās* the statements made by witnesses and that, where it is doubtful who the witness on a disputed matter are, time should be given for producing the witnesses in order to ascertain the proper means of proof but that where it is clear who the witnesses may be he should make the hearing of the case proceed at once. *Kāt.* (352) further prescribes⁴⁸² that when it is impossible to bring witnesses because they reside in a foreign country, evidence taken in writing before a man learned in the three Vedas and sent by him should be read in deciding the cause⁴⁸³. *Gaut.* 13. 2, *Manu* VIII. 60, *Yājñ.* II. 69, *Nar.* IV. 153 and others require that ordinarily there should be at least three witnesses in a cause. *Br.* (S. B. E. 33 p. 301 v. 16) says that there may be nine, seven, five, four or three witnesses, or two only if they are learned *brāhmanas*⁴⁸⁴. *Vistā Dh. S. VIII. 5* and *Br.* (S. B. E. vol. 33 p. 301 v. 16) emphasize that a single witness alone cannot be examined for deciding a matter⁴⁸⁵.

481. उद्दिष्टसाक्षिणि मृतं देशान्तरगते वा तदभिहितोक्तोक्तारं प्रमाणम् । विष्णुधर्म-
सूत्र VIII. 12.

482. अत्राप्यन्येनैव विद्वेष्टं यतिवादिनाम् (विद्वद्भक्तिसाक्षिनाम्) । वैविध्यहितं
लेखनसाक्षिणं वा प्रमादयेत् । वासपा. प. by अपरार्क p. 667.

483. This corresponds to the modern rule of taking evidence on com-
mission as provided for in Order 26 rules 4 and 5 of the Indian Civil Pro-
cedure Code (of 1908).

484. नन सप्त पञ्च वा स्तुत्यन्तराख्येनैव वा । इमा वा क्षत्रियैः क्षत्रातो नैकं दृष्टो
क्षत्राचन । सुव. 8. by स्मृतिच. II. 76 (adds उभाविति लिखितपटसाक्षिणवपम्),
परम. मा. III. 95, 84. p. 112.

485. Vide Ben on 'Evidence' (12th ed. of 1912) p. 315. The
Mosaic law in some cases and the Civilians and Canonists in all exacted the
evidence of more than one witness, a doctrine adopted by most nations in
Europe and by the ecclesiastical and some other tribunals among us. Accord-
ing to the Common Law of England and the Indian Evidence Act (1 of 1872)
sec. 134, no particular number of witnesses shall in any case be required for
the proof of any fact. Best (*ibid.* p. 520) notices that in prosecutions for
perjury the testimony of at least two witnesses is required by the Common
Law of England (now confirmed by Statute) and that by Statute two witnesses
at least are required in trials for treason. Vide *Emperor v. Bai Ganga-
dhar Tilak* 6 Bom. L. R. 524 where the rule about two witnesses in convic-
tions for perjury according to the Common Law of England was relied on.

V. P. p. 111). The principal qualifications are; ^{489a} they should be born of a good family, should have lived hereditarily in the country, should be householders having a son or sons, should be well-to-do and men of character, should be trustworthy, should know dharma and act up to it, should not be covetous and should have been cited by the parties as witnesses. Some Smṛti texts such as Kaut. III. 11, Manu VIII. 68 (= Kat. 351 and Vas. 16-30), Kat. 348 provide ⁴⁹⁰ that ordinarily witnesses should be of the same *varṇa* or caste as the parties, that women should be witnesses in disputes between women, that men of the lowest castes (*antyajas*) should be witnesses for litigants of those castes and that a litigant of a lower caste should not try to prove his case by citing witnesses of a higher caste or a brāhmaṇa (unless the latter is an attesting witness on a deed). But most (even including Gaut. and Manu) give an option and say that persons of all castes (even *sūdras*) may be witnesses for all. Vide Gaut. XIII. 3, Manu VIII. 69, Yaj. II. 69, Nār. IV. 154, Vas. 16-29 (*sarvaṣu varṇa eva cā*). Nār. IV. 155 and Kat. (349-50 q. by Aparārka p. 666 and V. P. pp. 111-112) provide ⁴⁹¹ that in disputes between members of groups such as those who wear peculiar symbols (indicative of their sect), *śrenis* (guilds), *pūgas* (associations), companies of traders and all others who work in groups and who are therefore called *varṇas* and in the case of slaves, bards, wrestlers, elephant riders, horse-trainers and soldiers the heads (called *varṇin*) of these groups are the proper witnesses. Gaut. XI. 21 says that in disputes among members of classes of agriculturists, traders, cowherds, money-

489a. बहवः स्पुरानिन्दितः स्वकर्मसु पातयिका राज्ञा निष्पौरपनभितायाध्यान्तर-
सिन्ध । गौ. XIII. 2; पातयिकाः शुचयोऽशुमता वा यपोवरादवाः पञ्चाशमनौ वा द्वौ सजं
यति न स्वैवेकः । गौ. III. 11; कुलजा इतन्निष्ठसंपत्ता पञ्चानस्तपस्विनः पुत्रिणो धर्मज्ञा
अपौराणाः सत्यवन्तः वैविध्यद्वयाः । विष्णु VIII. 8; मौलाः पतिहिताः साधये विदितवन्तः
कुलानां ज्ञानां जन्मतः कर्मतोर्धतः शुद्धाः पुत्रिणः सत्यवादिनः श्रोतस्मार्तकिपायकाः विगत-
द्वेषममरा अववासिनो पुत्रानो लोभमोहनिवर्जितास्तथपरा नवमं कथाका न जातु कुलनां
पतिपश्यन्ते । शङ्खलिलिखी in स. वि. p. 138.

490. ब्राह्मणस्त्वब्राह्मणवचनाद्वनवरोधोऽनिवृद्धयेत् । गौ. XIII. 4; विनाशो
वादिना वादकः सद्वीरेव भावयेत् । नोकृतेष्वानुकृष्टसु साक्षिभिर्भाषयेत्सदा ॥ कात्या. q. by
स्व. म. p. 111. मदनरत्न (which reads नोकृष्टं वाचकैरेत्, which seems to mean
'a litigant of a higher caste should not be proved to be what he is alleged
to be by the evidence of witnesses of lower castes').

491. लिङ्गिनः श्रेणिपूगाश्च शनिष्ठातास्तथापरे । समूहस्थाश्च ये चाप्ये वर्गास्तान-
वधीदृशुकः । दासचारणमहानां हस्तवन्ध्यायुधजीविनाम् । परैकेकैः समूहानां वापका शनि-
साधा । तेषां वादः स्वकर्मसु शनिष्ठातेषु साक्षिणः । कात्या. q. by अपारार्क p. 666. For
श्रेणि, पूग, vide p. 280 and note 383 above and H. of Dh. vol. II. pp. 67-68.

lenders and craftsmen (such as carpenters and washermen), the help of other members of the same calling may be taken as witnesses and arbitrators.

Long lists of persons who are generally to be regarded as incompetent to be witnesses are given in Kaut. III. 11, Manu VIII. 64-67, Udyogaparva 35, 44-47, Yāj. II. 70-71, Nār. IV. 177-187, Viṣṇu Dh. S. VIII. 1-4, Br. (S. B. E. vol. 33 p. 303 vv. 29-30), Kāt. 360-364 (q. by Aparārka pp. 669-670, Sm. C. II. pp. 77-78, V. P. p. 119). Manu VIII. 118 states the general grounds why oral evidence tends to be false viz. covetousness, infatuation, fear, desire of pleasures, anger, friendship, ignorance, minority. As the list of incompetent witnesses in Nār. is the longest,⁴⁹² that alone is set out here: one who has monetary⁴⁹³ interest in the parties or the subject matter of the suit (such as a co-sharer, creditor and debtor of the parties); a

⁴⁹² Vide appendix for the verses of Nārada. The commentaries and digests give various interpretations of some of the words. A few such are stated in the next note.

⁴⁹³ The Mit. explains 'arthasambandhin' as 'vipratipadyamānārthasambandhin'; while V. P. p. 117 explains as 'creditor or debtor' of a party. 'Āptāh' is defined by Kāt. 361 (quoted by Aparārka p. 669) as 'those who depend for livelihood on the assistance given by a party to the suit or those who serve him or cause benefit to him or those who are his relatives, friends or servants'. Sm. C. explains 'cārika' as a bard, while V. P. (p. 118) as oil-presser. The printed text of Nār. reads 'asraddha' (who is not invited at a śraddha), while V. P. and others read 'asraddha': for vrātya (one whose upanayana has not been performed) vide H. of Dh. vol. II. p. 176; 'prag-dyādosa' is explained by Asahāya as 'one who suffers from a disease which is the effect of evil actions done in past lives'. Kāt. 362 (q. by Aparārka p. 669) explains 'asābhaya' as sons of one's mother's sister or one's full sister or one's maternal uncle. The printed text reads 'śrānta', while Sm. C. II. p. 78 reads 'asānta' (restless) and V. P. 117 reads 'asrānta' (one constantly engaged in work). Kulika is explained as 'one appointed by the king to decide causes' (by Kalpataru), while the Madanaratna says 'he is the person in authority over a kula i. e. a group of brāhmanas or the like'. Vide V. P. p. 119; Sm. C. II. p. 78 and V. P. p. 118 read 'śūcaka' (one appointed by the king to find out crime among the people) for 'atāvaka' of the printed Nār.

friend (or relative such as an uncle); associate (in undertakings); enemy; one who has already been held to have given false evidence; one charged with (or addicted to) sins; a slave; one who is in the habit of finding the weak points of others (or harming others); one who has no faith in religion; a very old man (above 80 years); a minor; a woman; an oil-presser; one intoxicated; a lunatic; one who is extremely inattentive; one distressed; a gambler; a village priest; one who undertakes long journeys (on the great roads); one who is a merchant engaged in sea voyages; an ascetic (who has renounced the world); one sick; one bereft of a limb; one who is the only witness; a brāhmaṇa learned in the Veda; one who does not perform the customary religious rites; an impotent person; an actor; an atheist; a *vṛāṭya*; one who has abandoned his wife; one who has given up *agnihotra* (daily offerings into *śrāta* or *smārta* fire); one that officiates as priest for persons who are not entitled to perform vedic sacrifices; one who is an associate in eating food from the same vessel in which food is cooked (I. e. who is in commensality with a party); a former enemy (*ariśara* as one word); a spy; an agnate; a cognate (or born of the same womb); one whose evil doings in former lives are seen clearly; a public dancer (*śailasa*, or one who makes his women actresses); one who lives by (I. e. buys or sells) poison; a snake-catcher; one who is a poisoner, an incendiary, a mean person (*kṛnūṣa*, or parsimonious person); the son of a śūdra woman (from one of a higher caste); one guilty of a minor sin (*upapātaka*); one fatigued; a desperado; one who has relinquished all attachments; a person who is penniless (through gambling or other extravagance); a member of the lowest (untouchable) caste; one leading a bad life; a brahmachārin who has not yet returned from his teacher's house; an idiot; an oil-seller; a seller of roots; one possessed (by a ghost or demon); one hated by the king; a weather-prophet; an astrologer; one who proclaims to the public the sins of others; one who has sold himself (for money); one who has a limb too little (e. g. having four fingers to the hand); one who lives on the immorality of his wife; one who has bad nails; one with black teeth; one who has betrayed his friend; a rogue; a seller of liquor; a juggler; an avaricious man; a ferocious man; an opponent of a *śreni* (guild) or *gana* (association); a butcher; a hide-worker; a cripple; one excommunicated for a grave sin (like brāhmaṇa-murder); a forger (of documents or coins or weights &c.); one who employs incantations and drugs for influencing

others; one who is an apostate⁴⁹⁴ from the order of ascetics (*pratyavasita*); a robber; a servant of the king; a brāhmaṇa who sells human beings, cattle, meat, bones, honey, milk, water or clarified butter; a member of the three higher castes who engages in usury; one who has given up the peculiar duties of his caste (or station); a *kuḷika*; a bard; one who is the servant of a low person; one who has quarrelled with his father; one who causes dissensions. Kaut. III. 11, Manu VIII. 65, Viṣṇu Dh. S. VIII. 1 and several others say that the king cannot be cited as a witness⁴⁹⁵ (except possibly to prove the plea of *res judicata* or to prove what transpired before him when a litigation was going on).

The above is a formidable list of incompetent witnesses; therefore, most Smṛtis such as Gaut. XIII. 9, Kaut. III. 11, Manu VIII. 72, Yaj. II. 72, Nār. IV. 188-189, Viṣṇu Dh. S. III. 6, Uśanas (q. in Sm. C. II. p. 79), Kāt. 365-366 (q. in Sm. C. II. p. 79) expressly point out that strict examination of the character of witnesses should be entered upon in disputes about debts and

494. In *Omichand v. Barker* (Willes 1737-1860 p. 338) where Willes (Lord Chief Justice) says (at p. 551) that in Popish times and for some little time afterwards till the Reformation was fully established there was a notion that 'even an alien friend especially if he were an infidel could not sue in a court of justice here'. That shows how non-Christians found it difficult to sue in England for their just rights a few centuries back. In the case cited above Lord Chief Justice Willes had to deliver an elaborate judgment in 1745 for holding that evidence taken in India according to the oaths administered to non-Christian witnesses could be read in a trial held in England. So one need not laugh at Nār. who flourished at least about 1200 years before that date if he held an atheist or an apostate to be an incompetent witness. It should be noted that 'By the canon Law a Jew is not admitted to give evidence against a Christian, especially if he be a clergyman,' vide Taylor on Evidence (ed. of 1848, p. 655 note C.)

495. Vide Taylor's 'Law of Evidence' (12th ed.) vol. II, p. 872 para 1381 about the sovereign giving evidence on oath; his considered opinion being (after referring to the case of *R. v. Mylius* in which the defendant was prosecuted for a libel upon king George V) 'that the sovereign if so pleased may be examined as a witness in any case, civil or criminal, but not without being sworn.' The *व्यव. नि.* p. 100 says ननु न साक्षी वृषतिः कार्यं इति राज्ञः साक्षित्वनिषेधात् । तस्य कथं साक्षित्वमिति चेत्, उच्यते । व्यवहारदर्शनकालेऽवगतेऽर्थेऽपि तत्रैव साक्षित्वमुच्यते. कालान्तरादेश्च निषेधः । तथा च व्यासः । राज्ञा धर्मासनस्थेन वच्यते तस्य निषेधात् । नान्यः साक्षी भवेत्तत्र कुत्सा राजानमभिरम् । इति । वृहस्पतिः । निर्णीते व्यवहारे तु दुतर्काद्यो वद्वा भवेत् । अथवाः सम्प्रसहितः साक्षी स्वाचक्ष नान्यथा न. The *स्मृतिच.* II, p. 80 and *वरा. मा.* III, p. 103 have the verse of वृहस्पतिः न साक्षी वृषतिः कार्यः । ननु. VIII. 65.

the like which are of a fixed nature (of a civil nature), but that in complaints about all kinds of *sāhara* (heinous crime), in robbery, adultery or the two kinds of *pāruga* (viz. defamation and assault) there should be no (strict) inquiry into the character of witnesses (that is, all can be witnesses in such cases) and that even those like slaves and fault-finders who have been enumerated among incompetent witnesses can become witnesses in grave matters⁴⁹⁶. The idea is that in such cases the witnesses need not be strictly examined as to their possessing the good qualities ordinarily required in witnesses. But this does not authorize the examination of such persons as lunatics or idiots as witnesses, because they have not the power to understand things. Manu VIII 77 emphatically states that even a single male, if he is free from greed, may be (sufficient as) a witness, but not women of good character, even though they be many, since the feminine intellect is apt to be unsteady. But even Manu had to concede (VIII 70) that a woman or a minor or a very old person or a pupil, relative, slave or a hired servant may be a (competent) witness, if it is impossible to find another witness (in matters that occurred inside a house or in a forest or in crimes where life is lost). Kāt. 367 (q. by Aparārka p. 671) says the same thing. Usanas⁴⁹⁷ (quoted in the Sm. C. II. p. 79, V. P. p. 120) provides that even a slave, a blind man, a deaf person, a leper, a woman, a minor, a very old man may be (competent) witnesses in *sāhara*, provided they are not interested in the matter of dispute (or are not related or partial to the parties). Nār. (IV. 190-191) gives it as his view that even when there is to be no strict inquiry into the character of witnesses in *sāhara*, still a minor, a woman, a single person, one who forges deeds (or who is a

496. कथाविषु परीक्षेत साक्षिणः स्थिरकर्मसु । साहसार्थाधिके चैव परीक्षा कुत्रचित्समुत्ता ॥ वाधातु उपजायाः संघटे साहसेषु च । स्नेहपादपयोधैश्च न परीक्षेत साक्षिणः ॥ अन्तर्वेदमनि रात्रौ च बहिर्गोमास्यं यज्ञेषु । एतेष्वेवामियेनञ्चैव परीक्षेत साक्षिणः ॥ कात्यायन अपराकं p. 670-71, स्मृतिच. II. p. 79: पादपयोधैस्तद्वर्णेषु तु परिरूपालसहाय-वर्जाः । को. III. 11.

497. दामोऽश्वो वधिरः कुप्रीं स्त्रीवाटस्थविरादयः । एतेष्वनभिसम्बन्धाः साहसे साक्षिणो मताः ॥ उद्गमसु q. by स्मृतिच. II. p. 79. साहस is of four kinds 'मनुष्यमारण्यौर्ध्वं वरद्वाराभिमर्शनम् । पादपयोधनयं चैव साहसं तु चतुर्विधम् ॥ q. by अपराकं p. 670 (as from मनु), परा. मा. III. p. 450 (as from वृह.), स्प. प्र. p. 120. यत्र दुर्मासा-वधिराश्वयोः तत्र स्त्रीणां साक्षर्यं नास्ति यत्र तु स्त्रिया सह इत्ये कार्यं स्त्रीणां चेत्तरेतरे स्वल्पं तत्र भवन्त्येव स्त्रियाः साक्षिण्यः । न चाप्ये निरमः स्त्रीणां स्त्रिय एव साक्षर्यं कुतुर्मे दुर्मासः । केचलं पुत्रविविधये व्यवहारे कचिद्वैव स्त्रीणां साक्षर्यं यतोऽस्थिरत्वादिति हेतुवशातः । भवन्ति काश्चन स्त्रियां ब्रह्मवादिन्य इव सत्यवादिन्यः स्थिरचतुर्विधः । मेधा० ८० मनु VIII. 65.

cheat), a relative and an enemy cannot be witnesses in *sāhasa*, since a child through ignorance, a woman from her habit of untruthfulness, a forger (or cheat) because he is accustomed to doing evil deeds, a relative from affection and an enemy from the idea of taking revenge may speak falsely. There was no total disqualification of women as witnesses, since Manu quoted above allows them to be witnesses in disputes between women and in cases where it is not possible to have other witnesses. Medhātithi on Manu VIII. 68 holds that women are disqualified as witnesses only where the plaintiff and defendant are both males but that where there is a litigation between a man and a woman or between women alone, a woman may be a competent witness. Ancient Hindu Law is not singular in its partial rejection of the testimony of women. Vide Best on Evidence (12th ed. of 1922) pp. 53-56 where it is shown how ancient Roman Law and the Medieval laws of several countries of Europe more or less excluded the testimony of women, how some States in the U.S.A. excluded the testimony of negroes and persons of coloured blood. By the Canon Law more credit was given to male than female witnesses (Taylor on Evidence, ed. of 1848 p. 655, note d).

Nār. (IV. 157-172) states that incompetent witnesses fall into five classes: (1) some⁴⁹⁸ like learned brāhmanas, very old men, ascetics, persons practising austerities are incompetent because ancient texts (*vacana*) say so and there is no other (special) reason for their exclusion. The Vyavahārātattva

498. असाक्षिण इति शास्त्रेऽस्मिन् दृष्टः पञ्चविधो दुर्धः । वचनानुपेक्षता भेदात्तद्वय-
मुक्तिरुत्तान्तरः ॥ श्रोत्रिणा तापसा वृद्धा ये च पञ्चजिता नराः । असाक्षिणस्तैः वचनाज्ज्ञात-
वैतुषदाहृतः ॥ स्तेनाः साहसिकाश्चण्डाः कितवा वधकाश्च ये । असाक्षिणस्तैः दृष्टत्वासेषु सर्व-
त्र विहिते ॥ राज्ञा परिपूहीतेषु साक्षिण्येकार्थनिश्चये । वचने वच भिद्येत ते स्मृतेर्भादसाक्षिणः ॥
अनिर्दिष्टस्तु साक्षित्वे स्वयमेवेत्येव यो वदेत् । स्मृतिरनुक्तः स शास्त्रेषु न स साक्षिण्यमर्हति ॥
योषोः आश्रयितायाः द्याचस्मिञ्जसति धार्यणि । ऊ तद्वदस्तु साक्षित्वनिपसाक्षी मृतान्तरः ॥
नारद IV. 157-162; compare नारद IV. 94 'सन्तोषि न धमार्जं स्मृतेरुते धनिनि-
साक्षिणः । अथवा आश्रयितायाम्स्वयमेवमात्मनमुत्पुला ॥ शब्द q. by मिता. on वा. II. 69
says 'विद्या विषयमानमुत्पुलासाक्षिणिरिदानीकतानमस्या निश्चयध्यासासाक्षिणः'. This
may be one of the texts to which Nār. refers in the words असाक्षिणस्तैः वचनात्'.
The *sv.* p. 115 explains मृतान्तरं as सामान्यतो य आपयोः काश्चिद् व्यवहारसम्ब-
न्धोस्ति तत्र त्वया साक्षिणा माप्यमिषेतायमायमुक्तं विशिष्य च व्यवहारविषयो न तस्मै
आश्रयिताः आपयिता च नास्ति स दृष्टोऽपि विशिष्य विषयाज्ञानादसाक्षीति यावत्'. The
स्मृतिच. II. p. 81 and *व्यव. नि.* p. 106 explain मृतान्तरं differently: धनिनि व्रते
अनावेदिते च व्यवहारे अनाहृतः सन् स्वयमेवेत्येव मृतपुत्रं निदिश्यामुत्पुलासो धारयति अर्ह-
साक्षीति यो वधीति असौ मृतान्तरनामा असाक्षी । मृत्पुत्रेणा दुर्धं यति आश्रिते तस्मिञ्जसो
साक्षीत्येव आश्रितः दुर्धं यति साक्षी नवत्येव । *व्यव. नि.* p. 106.

(p. 214) points out that śrotīyas and others cannot be appointed as witnesses, but they may be what is called *akṛta* witnesses explained below (i.e. they may if they choose appear as witnesses in a cause). They are not competent like the king, not because they are untrustworthy but because it is not advisable to call them. They were privileged persons; (2) thieves, robbers, dangerous characters, gamblers, assassins are declared to be incompetent because there is the defect (*doṣa*) of untruthfulness in them; (3) witnesses are rendered incompetent on the ground of contradiction (*bheda*), when the statement of witnesses who have been accepted by the king for determination of the same matter do not agree; (4) he who without having been appointed (by the parties to a transaction) as a witness (to it) comes of his own accord to depose is termed a *sūci* (i.e. a spy) in the *śāstras* (and so was styled *svayamukti* by Nār. IV. 157) and is unworthy to be a witness; (5) a person is incompetent as a witness by reason of intervening death (i.e. he is *mṛtāntara*); when can any person bear testimony if the creditor (or claimant) is no longer alive, whose claim should have been heard by him specifically (but was not heard in that way)? *Mṛtāntara* is a witness whom one or other of the parties informed in a general way that there was some dealing between the parties and who was asked to be a witness (but was not told the details of the dealing) and then subsequently the party died. In such a case the person told is not a good witness, as he cannot give the details. But Nār. (IV. 94) mentions an exception to this last rule viz. when a father while on the point of death tells his sons and the like 'these are the witnesses on such and such a matter,' there even after the father's death those witnesses would be competent though death intervenes.

Witnesses are divided by Nār. IV. 149 into two sorts: (1) those appointed (*kṛta*) by the parties and (2) those not appointed (*akṛta*); the first being of five kinds and the last of six kinds. The first five (acc. to Nār. IV. 150) are a subscribing witness (*likhita*), one who has been reminded (*smṛita*) i.e. one who is called as a witness without there being a document and who is present at a transaction and is again and again reminded of it by a party to it in order that the transaction may be effectively proved thereafter (Kat. 371 and 372 q. in Mit. on Yāj. II. 68), a casual witness i.e. one, who, while a transaction is being entered into, comes there by mere chance and is then asked to be a witness (*yadrochabhijñā* or *yadrochika*,

acc. to Br.), a secret witness i.e. one who is made to listen to the speech of the debtor while concealed behind a wall or screen, an indirect (*uttara*)⁴⁹⁹ witness (i.e. one who learns from a witness who has seen or heard of a transaction when the latter is going to a distant country or is on the point of death). The six *akṛta* witnesses (acc. to Nār. IV. 151-152) are co-villagers (in disputes about boundaries), the chief judge, the king (before whom a suit was tried), one who is closely acquainted with the transaction of the parties (i.e. *kāryamādhyaṅga*, acc. to Br.), one who is deputed by a party (for borrowing an ornament or for settling a transaction, called *dūtaka* by Br.), members of the family (*kulya*) in disputes among other members of the family (as regards partition &c.). Br. mentions twelve kinds of witnesses that are practically the same as the eleven of Nār. except one which he adds viz. *lekṣita*⁵⁰⁰ (one whose name is caused to be written by a party in the presence of the witness when that party enters into some transaction in writing such as a loan with another). The only difference between 'likhita' and 'lekṣita' seems to be that the first himself writes his own name as a witness on a document while the latter's name is written as a witness by one party in the presence of the other and of the witness. Br. (S. B. E. vol. 33 p. 299 verses 4-15 q. by Aparārka pp. 666-667) defines at great length all the twelve and Kāt. also defines most of them, but these definitions are passed over as not very important. Viśvarūpa remarks that these nice distinctions among eleven kinds of witnesses are made only for the sake of exposition and for the benefit of simple people⁵⁰¹.

499. यत्र साक्षी दिक्षे सच्छेन्मुन्युर्ध्वं यथाक्रमम् । अथ संभावयेत्तु विद्यादुत्तर-
साक्षिणम् ॥ बृह. in अपराकं p. 666; साक्षिणामपि यः साक्ष्यमुपदुर्ध्वं भाषते । अथवा-
च्युत्तराद्यादि स साक्ष्यवत्संज्ञितः ॥ आश्व. q. by मित्रा, on वा. II. 68. Dr. Jolly's
rendering of Kāt. in S. B. E. 33 p. 80 n. is not correct. Vide my notes
to स्ववहारमसूत्र pp. 66-67. The स्ववहारमसूत्र reads 'यस्मात्सर्वं स्वपक्षे परिभाषताम् ।
अथः' vide the विष्णुधर्मसूत्र VIII. 12 quoted in n. 481 which refers to a
witness that is the same as उत्तर. Compare sec. 32 of the Indian Evidence
Act about verbal or written statements of a person who is dead or whose
attendance cannot be procured except after unreasonable delay or expense.

500. अर्थिना च क्रियाभेदेऽस्तस्य कृता अण्यदिकम् । भाषणे लिखते यन्तु लेखितः
स उदाहृतः ॥ बृह. q. by स्व. म. p. 108. अपराकं p. 667 reads संवित्क्रियां क्रियामेवैः
कार्यं कृत्वा.

501. यन्तु नारदेनैकादशविधं साक्ष्यं कृताकृतत्वभेदेनोक्तं तत्सौहृदान्मुपयजन्मनुष्यपक्ष-
भेदम् । विश्वरूप on वा. II. 71.

Before a witness for a party begins to depose, it is the duty of the opposite party to point out the ground or grounds, if any, of the incompetence of the witness put forward for examination. Kāt. adds⁵⁰² that the latent defects of the witnesses of a party must be pointed out by the opposite party, but the patent defects will be considered by the members of the court at the time of giving their decision. Vyāsa⁵⁰³ states 'the defects of the witnesses of a party should be pointed out by the opponent in open court by putting them down in writing and the witnesses should be called upon (by the judge) to refute them; if the witnesses admit (the faults pointed out) they do not deserve to be witnesses; if otherwise (if the faults are not admitted) they should be established by the opponent with evidence (other than those of other witnesses); for if the defects of the witnesses of a party were allowed to be established by other witnesses to be cited by the opponent, there would result the fault of a never-ending series (*anavasthā*), since the first party would then try to show defects in the latter set of witnesses and this may have to be carried on *ad infinitum*.' Br. laid down that an opponent should not be allowed to point out the grounds of incompetency in witnesses after they have begun to depose and Kāt. adds⁵⁰⁴ that he (that party), who points out, after the witnesses have deposed to a matter, faults in them in whom he found none at first and who can not set out a proper reason (for his not proclaiming the faults at first) should be fined in

502. दणमस्य हि ये दोषा वक्तव्यास्ते विवादिना । यद्वास्तु प्रकटाः सन्धेः काले शास्त्र-
प्रदर्शनम् ॥ कारपा q. by अपरार्थ p. 671, स्मृतिच. II. p. 83 which adds काले निर्णय-
काले. The स्व. म. p. 39 says 'यद्वाः शास्त्रप्रदर्शनेन साक्षिवादात्पूर्वकाले वक्तव्याः'.

503. साक्षिदोषाः यथोक्तव्याः संसदि प्रतिवादिना । पक्षेऽभिलेख्य तावत् सर्वान् वाक्या-
ग्रन्थुर्धरे तु ते ॥ मतिवली न साक्षिवमर्हन्ति तु कदाचन । अतोऽप्यथा भावमोषाः क्षिपया
प्रतिवादिना ॥ अपरेस्तु साक्षिभिः साक्ष्ये दूषणे पूर्वसाक्षिणाम् । अनवस्था भवेदोपलोभाम-
प्यन्यसम्भवात् ॥ व्यास q. by स्मृतिच. II. p. 83, स्व. म. p. 38 (first two). The
first two are ascribed to कतपा. by परा. मा. III. p. 106 and स्व. नि. pp
112-113. The *mitha* on च. II. 73 has the following lucid note 'मतिवादिना
साक्षिदूषणे दूषे ग्रन्थुर्धरेण्यनुषणेषु चालपादिषु तथैव निर्णयः । अपरेषु तु तद्वचनाहो-
कतथा निर्णयो न साक्ष्यन्तरेणेति मानवस्था । यदि साक्षिदोषमुज्ज्ञाप्य साधयितुं न शक्नोति
प्रतिवादी तदासौ सारासुसारेण दण्ड्यः । अथ साधयति तदा न साक्षिणः ॥' Compare
sections 148 and 153 of the Indian Evidence Act about cross examination
to shake the credit of a witness.

504. लेख्यदोषास्तु ये केचित्साक्षिनां चैव ये स्मृताः । वाक्काले तु वक्तव्याः पश्चाद्-
काक्ष्ये दूषयेत् ॥ उक्तैर्धे साक्षिणो वस्तु दूषयेत्यामद्वितान् । न च तत्कारणे वृथावाच्यतया दूष-
साहसम् ॥ कारपा. in स्मृतिच. p. 83, न. वि. pp. 143-144. The first is ascribed
to हस्वति by अपरार्थ p. 672.

the first amercement. Br. further states⁵⁰⁵ that the defendant may point out the defects, if they exist, in the witnesses cited by the plaintiff; but if he finds faults which do not exist in the witnesses, he should be punished with a fine equal to the amount claimed (in monetary disputes) or equal to that which is levied from a false witness. If the witness of a party is not able to refute the defect pointed out by the opponent, the party calling him should try to clear his witness of the fault; otherwise he should not succeed in his suit.

When a witness is about⁵⁰⁶ to depose, he was, acc. to Br. (S. B. E. 33 p. 302 v. 23), to put off his shoes and turban, raise his right hand (in order to draw the attention of the Court) and after touching gold, cowdung or *darbha* grass was to depose to the truth. Āp. Dh. S. II. 11. 29. 7. says⁵⁰⁷ that a witness should depose to the truth on an auspicious day in the morning in the presence of kindled fire and near (a jar of) water in the hall presided over by the king (or chief justice) and after being exhorted as regards both (viz. the results of truthfulness and falsehood) and when accepted by all (the court and parties) as a competent witness. Kaut. also (in III. 11) says that witnesses should be examined in the presence of brāhmanas, water-jar and fire. Manu (VIII. 79-80) provides that the judge should in a conciliatory manner exhort all witnesses assembled inside the court in the presence of the plaintiff and defendant as follows: 'whatever acts of these two (litigants) between themselves you know as regards this matter (in dispute), narrate them all truthfully, since you are the witnesses in this case'. Yāj. II. 73 also states that witnesses should be made to depose in the presence of the parties and Gaut. XIII. 13 and Kāt. (q. by Mīt. on Yāj. II. 73) prescribe that witnesses⁵⁰⁸

505. साक्षिणोभिसमुद्दिष्टान् सत्यं दोषेषु वृषयेत् । अनुवाक्यपन्थादी तत्समं वृण्व-
मर्हति ॥ वृह० q. by स्मृतिच० II. p. 33, स. वि. p. 143.

506. विवाशोपासदुष्पण्यं दक्षिणे बाहुमुद्धरेत् । हिरण्यगोशकुटुर्भावं समादाय कर्त-
व्येत् ॥ वृह० : पादुसुखावस्थितः सखी शयनेः शायितः स्वकीः । हिरण्य...दुर्भासुपसृज्य
वदेदुत्तरं ॥ वसिष्ठः, both q. by स. वि. p. 157, परा. मा. III. p. 112. The first is
ascribed to कारणाधन by स्वय. नि. p. 116 (reads हिरण्यगोशोऽजकुटुर्भावं समा-
लम्ब्य सत्तं वदेत्).

507. पुण्याहो पातप्राविद्धोऽपामने राजवत्पुमवतः समासपाट्य सर्वालुमते सुखयः सर्वं
यन्त्रे ब्रूयात् । आय. ध. II. 11. 29. 7.

508. देवमाह्वयसांनिध्ये साक्ष्यं वृच्छेदते द्विजान् । उवृक्षसुखान्पादुसुखान्वा वृषाहो
ये शक्तिः शुक्लिनः ॥ आहूय साक्षिणः वृच्छेत्स्वियं शयनैर्धुम् । समस्तान् विविताचारान्
विज्ञातार्थान् वृषव्युपहृ ॥ कार्या. 344-45 q. by मिता. on वा. II. 73. The first is
समु VIII. 87 and the 2nd is नारद IV. 198.

should face the east or north, are to be examined in the presence of the images of gods and *brāhmaṇas* in the first half of the day and should be exhorted to tell the truth by being bound with oaths. This examination in the public and after an oath went a long way in checking the tendency to depose falsely. The oath consisted of two parts, viz. (1) the requirement to tell the truth and (2) the exhortatory and imprecatory part. Both were administered by the presiding judge. Gaut. (XIII. 12-13) appears to prescribe that an oath (*śapatha*) was not to be administered to *brāhmaṇa* witness, but Manu VIII. 113 (= Nār. IV. 199) does not make this distinction. Gaut. (XIII 14-23), Manu VIII. 81-86, 89-101, Viṣṇu Dh. S. VIII. 24-37, Nār. IV. 201-228 contain very long exhortations addressed by the judge to the witnesses relating to the importance and high worth of truth, stating how the conscience of a man pricks him, what rewards await the truthful witness here and in the next world and what sin and terrible torments in Hell are the lot of an untruthful witness, what evil befalls even the deceased ancestors of an untruthful witness and how he is liable to be punished by the king. They are too long to be cited here³⁰⁹. Shorter exhortations are found in Yāj. II. 73-75, Vas 16. 32-34, Baud. Dh. S. I. 10. 19. 9-12 (S. B. E. vol. XIV p. 203), Br. (S. B. E. vol. 33 p. 301 verses 19-22), Kāt. 343, Nār. IV. 200 provides 'let him (the judge) inspire them (the witnesses) with awe by (quoting) ancient texts, extolling the greatness of truth and denouncing falsehood'. Kaut. (III. 11), Manu VIII. 88 and 113 (= Nār. IV. 199), Viṣṇu Dh. S. VIII. 20-23 add further modes of speech and exhortations according to the *varṇa* of the witness: A *brāhmaṇa* witness is to be addressed by the judge as 'speak' and to be exhorted to swear by his veracity, a *ksatriya* one was to be addressed as 'speak the truth' and to be sworn by the animal he rides and his weapons (which he is to touch), a *vaiśya* is to be sworn by his kine, grain and gold and a *sūdra* is to be sworn by (imprecating on his head) all grave sins. Manu VIII. 88 provides that a *brāhmaṇa* should be asked to depose

309. Vide Appendix for Nārada's verses.

310. The exhortation in the अथर्वशास्त्र (III. 11) is somewhat different from Manu's 'तत्र ब्राह्मणे ब्रूयात्सत्यं ब्रूहीति राजस्य वैश्यं वा मा तवेहापूर्तकलं, कपाल-हस्तः शत्रुघर्षं, भिलार्थी मघहेरिति शूर्वं जन्ममरणान्तरे यद्वाः दुष्पकलं तद्वाजानं नष्टेयं, राज्ञश्च कित्तिवर्षं युष्मानन्यथावादे । दुष्पश्चादुपपन्नः पश्चादपि ज्ञापेत यथाबुद्धयुक्तम् । एक-मग्नाः सत्यमवहरतेति ।'. The text in Dr. Sham Shastri's edition is rather corrupt and not properly arranged.

with the word 'speak', while VIII. 113 states that a brāhmana is to be made to swear by his truth. Some explain that the first rule applies to excellent brāhmanas and the second to inferior ones and rely on Gaut. (XIII. 12-13) who prescribes that an oath to speak the truth is not to be administered to brāhmanas but only to others. Vide Haradatta on Gaut. and Vivadacandra p. 127. Manu VIII. 102 (= Baud. Dh. S. I. 5. 95) is careful to point out that the exhortation is not to depend purely on the caste but that brāhmanas (and others) who tend kine, who engage in trade, who are craftsmen or actors, who are menial servants and usurers should be treated (by the judge) as śūdras⁵¹¹ (in the matter of taking oaths). Witnesses after they are assembled before the Court are to be ordinarily examined separately (vide Kāt. quoted in n. 508 above). But Gaut. XIII. 5 and Kāt. 394 provide⁵¹² that if a certain matter is seen by the witnesses as a body then they may be examined together. Manu VIII. 78 and Kāt. 392 prescribe that what the witnesses declare quite naturally (without hesitation and fear) should be taken down and that when the witnesses have declared (what they know) they should not be questioned again and again by the king (or judge). From the Smritis and the 9th Act of the Mrochakatika it appears that

511. The Mit. on Yāj. II. 73 explains Manu VIII. 113 as follows: a brāhmana witness is to be sworn by being told that if he spoke untruth his truth will perish, a kṣatriya that his vehicle and arms will be fruitless, a vaiśya that his cattle, grain and gold will be lost and a śūdra that all sins will be his lot. Others explain differently. The Vyavaharatattva p. 215 says 'गोबीजकाञ्चनादहरे यत्पापं तत्सकलतामिधाने स्यादिति वैश्यम्'. The दीपकलिका on वा. II. 74 says the same. Medhātithi on Manu VIII. 113 appears to hold that the exhortatory part is repeated by the witness यद्यहमेवं कुर्यात्सर्विदमनिष्टमाप्नुयामिति अकीर्तनक्रिया श्रवणः । तत्र यः श्राप्यते स एवं वाच्यते सत्येन शपे सत्यादिनिषेधनोप धर्मो वा मे निष्फलः स्यादिति । ... गोबीजकाञ्चनानि वैश्यो हस्तेन स्पर्शयित्वाभिप्रेतवानिति वा मे निष्फलमिति पूर्ववत् ।'. The Madanaratna says that brāhmanas following such avocations as rearing cattle should be made to take an oath like śūdras, गोरक्षणादिभिरपकुटा नाङ्गणान्तु शुद्धवच्छरणं कारयेन् यः श्रप्येतः स्वकर्मण्यः परपिच्छोपजायते । द्विजत्वमभिकाङ्क्षन्ति तांश्च शुद्धवद्वाच्येत् ॥ Vas. III. 1 and Manu II. 168 provide that brāhmanas who have not studied the Veda, who do not expound it or do not keep the sacred fires become equal to śūdras. The Indian Oaths Act (X of 1873) sec. 6 allows a witness who has an objection to taking an oath to make an affirmation.

512. समवेतेषु यद् दृष्टं तत्कार्यं तत्तथैव तु । विनिश्चयेककार्यं यद्वक्तव्यं तत्पुनश्च पुनश्च ॥ कात्या. q. in अथर्वकं p. 675. Vide इद. य. p. 126 for two different readings and interpretations of सौ. XIII. 5. स्वभावेनैकं वचनमेतदा साक्षं यदोपकृतम् । यत्के तु सतस्मिन् राज्ञा न गृह्यते पुनः पुनः ॥ कात्या. q. in अथर्वकं p. 675, मिता. on वा. II. 79 (without name).

it was the chief judge or the judges who put questions and that there was no elaborate cross-examination and re-examination of witnesses as in England (which practice is followed in modern India). The only cross examination that appears to have been allowed was about the faults or grounds that made a person an incompetent witness. In this respect ancient Indian practice resembled modern judicial practice in some European³¹³ countries other than England. Witnesses were compelled to attend. Kaut. III. 11 states that witnesses who are not far removed by time or space should be produced by the parties themselves, but those who are far away or who are unwilling to stir shall be got summoned by order of the king³¹⁴. Manu VIII. 107, Yaj. II. 77, Br., Kāt. and Vāṇu Dh. S. VIII. 37 say that if a witness knowing all facts and not prevented from coming by disease or similar causes refuses to come as a witness he incurs the sin of false witness, has to pay the amount in dispute and ten per cent thereof as fine to the king. This is in accordance with the principle enforced in modern times that it is the duty of a citizen to appear before a court of justice when summoned. Kaut. (III. 1) provides for subsistence allowance to witnesses. It is not quite clear whether parties could be regarded under ancient Hindu Law as competent witnesses on their own behalf. Yaj. (II. 13-15) appears to suggest that parties could be regarded as witnesses in their own cause and held to be false from their demeanours in the case of witnesses. Kaut. IV.³¹⁵ 8 and the 9th Act of the *Mṛchakaṭika* show that the accused was questioned by the Court as to his movements about the time of the alleged offence and till his arrest. Śukra³¹⁶

313. Vide Stephens' 'History of the Criminal Law of England' (1853), vol. I. chap. XII, where on p. 431 he remarks 'cross examination is a highly characteristic part of an English trial, whether civil or criminal, and hardly any of the contrasts between the English and continental systems strikes an English lawyer so forcibly as its absence in the continental system.'

314. देशकालाविहृतस्थान् माक्षिणः पतिपादयेत् । इहस्थानमसारान्वा स्वामिवाक्येन साधयेत् ॥ कौ. III. 11 last verse; आहूतो यस्तु नामच्छेदसाक्षी रागविवर्जितः । कर्णे धर्मे च द्वाप्यः स्वाजिपक्षायवत्सु सः ॥ बृह. 9. by स्मृतिच. II p. 91, परा. मा. III p. 115; compare Order 16 rules 10-15 (of the Indian Civil Procedure Code) about the compellability of witnesses and the remedies against such as disobey a summons.

315. ततः पुनरेवाहुः पचारे राजो निवासं चाहवणादिति अनुवृत्तौ । कौ. टिप्प IV. 8.

316. स्तेनः कार्यविज्ञानी वा स साक्षी लभेकथा । इदार्थं च क्षतार्थं च कुत्र येराहृतो विधा ॥ शुक्र. IV. 5, 184.

IV. 5. 184 defines *saksi* in such a way as to exclude the litigant himself. Ordinarily witnesses were examined in the open court in the presence of the parties and never behind their back, but *Kat.* (387-389) prescribes that in the case of immovable property oral evidence may be taken on the property itself and in some cases even elsewhere than these two (*viz.* the Court and immovable property), that is, in the case of the death of living beings witnesses may be made to depose before the corpse (of the animal killed) or, in the absence of the body, before⁵¹⁷ some mark (such as the horn of an animal). *Bṛ.* and *Mān.* VIII. 25 state that the truth of the statements of witnesses should be examined by marking their tone, their change of colour, their eyes, their gestures, and their demeanour⁵¹⁸. Texts like *Saṅkha-Likhita* (q. by V. P. p. 124), *Nar.* IV. 193-196, *Viṣṇu Dh.* 8. VIII. 18, *Yaj.* II. 13-15 and *Kat.* 386 point out the actions and appearances of a party or witness that deposes falsely, *viz.* he appears restless, changes his place (*i.e.* moves from one spot to another), licks the corners of his lips, his forehead perspires, his face loses colour, he frequently coughs and heaves frequent sighs, he scratches the ground with his feet (toes), waves his hands and garment, his mouth becomes dry and his voice falters, he speaks incoherently, talks too much though not asked and does not reply straight to the questions asked and avoids meeting the eyes of the questioner. Such a witness may be looked upon as untrue and the king or judge should bring him under discipline (so that he will be afraid to lie). Merely on seeing these signs a witness was not to be punished or entirely disbelieved, since these signs raise only a probability of untruthfulness (as remarked by *Mit.* on *Yaj.* II. 15 and V. P. p. 124).

517. *सभासःस्यैतु वक्राचं सार्वं नाम्नज साक्षिभिः । सर्वसाक्ष्येस्वर्ग धर्मो ह्यप्यथ स्वावस्तु तु ॥ अर्थोपाधिर वक्रार्थं तत्रोरपि विना कश्चित् । चतुष्पदेस्वर्ग धर्मो हि पदार्थावस्तु च । यथ चित्पात्रिना सार्वं कदेवन्तिवसन्तिभिः । तदभावे तु चिह्नस्य नाम्कर्तव्यं दशाद्वयेत् ॥ कात्या. II. q. by *रसुनिच.* II. p. 89, *यरा. ना.* III. pp. 112-113, *स्व. म.* p. 41, *स्व. य.* p. 123. The reading *ह्यप्यसंनिधौ* for *सिद्धे* is better. *स्व. य.* p. 124 quotes a long prose passage from *शङ्खलिकृतं* about the demeanour of witnesses. The *mita* on *वा.* II. 15 remarks 'एतच्च दोषसम्भावनामात्रमुच्येत न दोषनिश्चयाय । स्वाभाविकनिमित्तविकारयोर्विकारय दुर्ज्ञेयमात्रः ।'*

518. *उपांशयताः परिक्षयाः सः स्वरचर्चोद्धृतादिभिः । एत. q. by रसुनिच. II. p. 85, *स्व. य.* p. 124. On कृतसाक्षी स विज्ञेयस्तं पापं विमयेद् धृष्टम् (*नारद.* IV. 196), *स्व. य.* remarks विमयेद् शिक्षयेद्यथा बौद्धसाक्ष्याद् विमतीत्यर्थः *i.e.* साक्षुषिक-वैचारिक-विकार-विकारय दुःशक्त्यात् संभावनामात्रेण च दुष्कृतस्यान्यास्यत्वादिति वृक्षम्. (p. 124). Vide also *mita* on *वा.* II. 15 cited above.*

When there are many witnesses but they differ in their statements certain rules are laid down by Manu VIII 73 (= Visnu Dh. S. VIII. 39), Yāj. II 78, Nār. IV. 229, Br. (S. B. E. vol. 33 p. 303 v. 35), Kāt. (408). They are briefly these:³¹⁹ The statement of the majority of witnesses should be accepted, but if they are equally divided then the statement of those who are more pure (in character or more disinterested) should be accepted and if the meritorious are divided equally then those who are the best among them should be accepted as true. The Mit. on Yāj. II 78 adds that if there is a conflict of testimony between the statements of a few but eminently qualified witnesses on the one hand and those of a larger number of ordinary witnesses, then the former should be accepted as Yāj. II. 72 requires i. e. it prefers quality to mere numbers. Kaut. III. 11 prescribes that when there is conflict in the oral evidence the decision should be according to the evidence of the majority of witnesses or of those who are pure in character or of those who are approved of by both sides as good witnesses or a mean should be drawn from their statements. Nār. IV. 160 and Kāt. 359 state³²⁰ that if one out of the (three) witnesses attesting a document or out of (three) witnesses that are cited by a party deposes in a way contradictory to what is deposed to by the other two, then all the three become incompetent witnesses on account of contradiction. This has been interpreted by the Vyavahāra-mātrikā (p. 326) to mean that where all witnesses are of equal status and there is a majority of only one favouring one side, then all the witnesses are incompetent and oral evidence is in that case futile for decision.

The important question is how much has to be proved by the party calling witnesses. Yāj. II. 79 (= Visnu Dh. S. VIII. 38), Nār. II. 27 and Br. (q. by Sm. C. II. 91) state the general rule that that party whose averments are supported in their entirety as true by the witnesses becomes successful, while that litigant

319. साक्षिद्वये बहुतस्तु वाह्यः साम्ये सुमान्विताः सुनिर्द्वये क्रियासुकारतत्ताप्ये सुचिन्तितः ॥ बृह. q. by स्प. मा. p. 325, परा. मा. III. p. 116. The Mitā. on Yāj. II. 76 explains 'यदा पुनसुनितां विमतिपत्तिस्तदा ये सुमान्विताः सुतात्पर्यतद्वाप्यसुदान् चमपुत्रादिगुणसंपन्नान्तेषां वचनं वाह्यम् । तस्य तु सुनिताः कतिपये इत्येव च पक्षमन्वयानि सुनितामेव वचनं वाह्यम् । उभयाप्युभयोः साक्षी नवत्येकोपि धर्मविदिति सुमान्वितवत्पुत्रवत्तात् ।'

320. साक्षिणां निश्चितानां तु निर्दिष्टानां च साक्षिणां । तेषामेकोमप्यपरादीं ये वाह्यं न साक्षिणः ॥ कात्या. q. by अथर्वक. p. 670, स्प. मा. p. 325, परा. मा. III. 116.

whose claim is declared by them to be false certainly loses⁵²¹. Nār. IV. 232 and 234, Kāt. 396, 398 lay down⁵²² the rule that in civil disputes that are of a non-urgent nature (like recovery of debts), if witnesses depose to more or less (than what is averred in the plaint), then the claim is not established in its entirety; where the witnesses depose to more or less (than the claim affirmed by the party) the deposition of the witnesses should be considered as not taken down or it should be omitted (from consideration)⁵²³; the witnesses in such a case are not liable to fine; they may deserve to be fined if they do not depose (to what they know). Similarly Nār. IV. 233 and Kāt. 399 say that where the depositions of witnesses are in conflict as to the place, the time, the property, the amount, the colour, the species (or caste), the form (or shape), the age (as stated in the pleading of a party), the depositions are to be regarded as good as not given at all. The rule amounts to this that any discrepancy between the essential details or particulars of a claim

521. यदाशेषयतिज्ञार्थं साक्षिभिः प्रतिवर्तिताः । स अपीत्यादुपधा तु साध्याय न समाप्नुयात् ॥ बृह. q. by अपराकं p. 678, स्मृतिक. II. p. 91, परा मा. III. 114.

522. अनादिषु विषादेषु स्थिरावेष्टु निश्चितम् । ऊने वात्पक्षिके वार्धे मोक्षे सार्धं न निश्चयि । ऊनाधिकं तु पत्रं स्यात् तत्सार्धं तत्र वर्जयेत् । साक्षी तत्र न दण्ड्यः स्यादुपपन्नं दण्डनमस्ति ॥ कात्या. 396, 398 q. by स्व. मा. p. 312 and 313, अपराकं p. 678, स्मृतिक. II. p. 90, भाव. नि. p. 68.

523. The maxim (in Yāj. II. 20) that on proof a part of a claim the whole may be held to be proved (vide above n 431) applies only where the opponent totally denies every item of the claim of the plaintiff. This is a presumption and the king or judge is not to be blamed for acting upon it in case of total denial, as said by Gant. XI. 23 and 32. 'अवाधियमे तर्कोन्मुपादः । ... तत्सामानाचार्यानिन्द्यो' This text of Yāj. is apparently in conflict with Kāt. 473 (q. by Mit. on Yāj. II. 20) 'in claims containing several items, the creditor (or plaintiff) secures a decree for as much out of them as he is able to establish by means of witnesses'. These two verses are sought to be reconciled in various ways by the Mit. (on Yāj. II. 20), the Sm. C. II. pp. 120-121, Vyavahāra-mātrikā pp. 310-312 (where it criticizes the views of Yoginī), V. P., pp. 98-102. It is impossible for want of space to go into these interpretations. The Mit. says that Kāt. 473 applies to a case where the son or the like being ignorant of the debt contracted by his father or the like says 'I do not know' i.e. pleads ignorance. In that case he does not deny (he is not 'nīhava-vādin but only *ajñānin*). The Vyavahāranirnaya p. 68 explains Kāt. 473 in the same way and about 396 it adds that when he cites witnesses as supporting his entire claim and the witnesses depose only to a part of it or to more than he avers then his claim fails in its entirety but in *sāhāsa*, theft and adultery it is otherwise.

524. देवं कारं धनं संख्या कर्तुं जायाह्वती वयः । विसंवेद्यच्च सत्ये वदुस्तु निदुःखं ॥ कात्या. in अपराकं p. 678 (reads दिनं for धनं), स्मृतिक. II. p. 90.

made in the plaint (such as the time, place, number &c.) and the case made out in the depositions as to any of these essential particulars will have the same consequence as tendering no oral evidence. This rule was not followed to the letter and besides other means of proof could be resorted to, as stated by the Mit., the Vivādacandra and others⁵²⁵. Kaut. III. 11⁵²⁶ states that when the witnesses depose to less than what is averred in the plaint, the plaintiff has to pay a fine (of a fifth part) on the excess and when they depose to more than the claim, the excess (held proved on the depositions) may be taken by the king.

In charges of adultery, heinous crimes (*sāhasa*) and theft the whole of the matter that is alleged may be held proved, when witnesses depose to only a part of the matter⁵²⁷ (says Kāt. 397).

Nārada IV. 165 prescribes that a litigant⁵²⁸ should not secretly approach a witness cited by his opponent, nor should he try to win him over (by bribes or threats) through another; if he does so, he would suffer the consequences of a losing party (*hina*).

There were rules about the late production of evidence. It has been already shown how if a litigant adduces weak evidence, though strong evidence is available, he would not be allowed to rely on the latter after judgment is pronounced. It is said by Nār. I. 62 that when a law-suit has proceeded far enough (lit. has been cleansed or thrashed out), evidence such as a

525. यत्र तु प्रतिज्ञातार्थस्य विस्मरणादिना भाषाभाषी साक्षिणो न प्रतिपादयन्ति तत्र प्रमाणान्तरेण निर्णयः कार्यः । मिता. on वा. II. 79; एतावता सम्बेदे दुष्णीभावे वा न जानामि इति नापने वा किञ्चिदभिधाने वा यावत्पर्यं संशयस्तत्र क्रियास्तरेण निर्णय इत्यवधार्यते । प्रकृतविरोधपक्षिकाभिधाने जय एव । प्रकृतविरोधपक्षिकाभिधाने भद्र एवेति । निवा-
दचन्द्र pp. 131-132.

526. साक्षिणश्चेदभिधेयाहूतं ह्युरतिरिक्तस्याभिधेयका बन्धं दद्यात् । अतिरिक्तं वा ह्युत्तमतिरिक्तं राजा हरेत् । अर्धशतक III. 11.

527. साक्ष्यार्थेणेति यद्विधे साक्षिभिः सकलं भवेत् । खीमहे ताहमे चौर्यं वासायं परिकल्पितम् । कात्या. १. ४५ मिता. on वा. II. 20, अथर्वकं p. 678, स्मृतिच. II, p. 90.

528. The fact that a party requested a witness to give false evidence is, admissible evidence against such a party, it being an admission by conduct that the party has a bad case. Vide Cockburn C. J. in *Moriarty v. London Chatham and Dover Ry. Co.* L. R. 5 Q. B. p. 314 at p. 319 'if you can show that a plaintiff has been suborning false testimony and has endeavoured to have recourse to perjury, it is strong evidence that he knew perfectly well his cause was an unrighteous one'. Vide illustration 8 to section 8 of the Indian Evidence Act.

document or witnesses, would then become useless, if that evidence had not been announced before⁵²⁹. After a reply is filed by the defendant, the plaintiff has to give a list of his evidence i. e. documents or witnesses (Yaj II. 7). The meaning briefly is as follows: If he does not do so, proceeds with the trial and does not call all necessary witnesses or produce all documents and the case is almost finished, but judgment is not pronounced, even then he would not be allowed to produce fresh evidence at that late stage. For if fresh evidence not previously disclosed were allowed to be given at that late stage, it would cause surprise to the defendant, who would then demand time for adducing evidence in rebuttal and then the plaintiff may again cite further evidence and this process is in danger of being carried on *ad infinitum*. If however witnesses were already cited but all were not examined (e. g. if ten witnesses were mentioned and only three examined) and the plaintiff found that the evidence of the few witnesses examined for him is contradictory or hostile, then he may be allowed to produce even at a late stage the remaining witnesses (who may be seven i. e. double the number of those already examined or who may be more respectable or purer in character). This proposition is contained in Yaj. II. 80 on which the *Mitākṣarā* remarks that even if witnesses are not mentioned in a list, but before judgment is pronounced other more reliable or respectable witnesses or double in number (and of the same status as) of those examined are available, they should be examined by the court even at a late stage. The rule is that as long as witnesses are available resort to ordeals should not be had. Yaj. II. 80 also has given rise to various interpretations. Vide *Mit.* and *Aparārka* on Yaj. II. 80, *Sm. C.* II. p. 94, *V. P.* p. 130-134. The *Mit.* thinks that the verse applies where the plaintiff or the party on whom lies the burden of proving a positive proposition finds that the witnesses produced by him are hostile or contradictory and that in such a case he may be allowed to cite other more respectable or more numerous witnesses to prove his proposition and to show that the first set of witnesses is false, while *Aparārka* holds that the verse says that when the party who has to prove his

529. निमित्तकथनवहारेषु यमालम्ब्यत भवेत् । लिखितं साक्षिण्यं वापि पूर्वमावेदितं न चेत् ॥ मातृ 1. 62. निमित्तक does not mean निमित्त, but शोधित (as *च.* p. 8. says) lit. washed out, cleansed (carried far). For detailed explanation of this verse vide my notes to *च.* p. pp. 75-80. The *Madanaratna* introduces *Nār.* I. 62 with the words. 'अथ च विपरीतसाक्षिण्यसामो व्यवहारसंगतः मातृ १६२'.

case cites witnesses which the opponent feels are false, the opponent may produce more respectable or more numerous witnesses to depose to the contrary and he would thus prove the first set to be false. Aparārka relies on Kāt. (408) for this proposition³³⁰. It may be said that Aparārka's interpretation appears more natural. V. P. (p. 134) accepts Katyāyana, but says that the interpretation of the Mīt. (of Yāj. II. 80) is correct. Whatever view is accepted it leads to this that one set of witnesses not only may prove the truth of a party's case but also establish that another set of that party's witnesses are guilty of perjury.

Yāj. II. 82 provides that if a witness, having promised with other witnesses to depose to a state of things, denies at the time of his examination that he saw the matter in dispute, he should be fined eight times the amount that a defeated litigant would have to pay and a brāhmaṇa witness similarly guilty if unable to pay may be banished (or his house should be razed to the ground). Nār. IV. 197 says that such a person is worse than a false witness. Manu VIII. 107, Yāj. II. 76, and Kāt. (405) prescribe that if a person who has witnessed a transaction does not depose (i. e. remains silent) about it, though not suffering from disease or some other calamity, he should be made (after waiting for three fortnights) to pay the amount of the debt or other matter in dispute and also one-tenth thereof as fine to the king.

After the witnesses have deposed the chief justice and *śalhyas* have to consider the depositions of witnesses (as Kāt. 340 provides)³³¹. The Court has to find out which set of witnesses are to be believed and what witnesses are perjured. Perjury entailed, according to dharmaśāstra works, both secular and other-worldly consequences. Āp. Dh. 8. (II. 11. 29. 8-9) states: 'When a witness deposes falsely the king should fine him and, in addition, the witness incurs hell after death' and Gaut. provides (XIII. 7 and 23), 'a witness telling the truth goes to heaven, but falls into hell if he does the reverse and when he deposes falsely he is to be censured and fined'. Manu VIII. 118 states that witnesses depose falsely through covetousness,

330. यद्यपि वाच्यं कार्यं साक्षिभिर्वादिना भवेत् । प्रतिवादी वदा तत्र नास्तेषां कार्यं मन्यथा । बाहुभिश्च कुलीनेषां दूरीः स्युः कृतसाक्षिनः । कात्या. 408 q. by अपरार्क p. 679, स्प. मा. p. 333, स्मृतिच. II. 94, स्प. म. p. 134.

331. साक्षिभिर्वाचितं वाक्यं मन्यते सह परीक्षयेत् । कात्या. 340 q. by मित्रा. on यज. II. 80, अपरार्क p. 675, स्प. मा. p. 331.

wrong ideas, fear, friendship, sexual passion, wrath, ignorance and minority and prescribes (VIII. 120-122) varying fines for perjury arising from these several causes. Br. (S. B. E. vol. 33 p. 301 v. 21) regards³³² a corrupt judge, a perjured witness and the murderer of a brāhmaṇa as equally sinful. Yāj. II. 81 and Kāt. (407) prescribe³³³ that the litigant who procures perjured evidence and the witnesses guilty of perjury should each be separately fined double the amount of the fine prescribed for defeat in various disputes and a brāhmaṇa (guilty of doing the same) should be banished from the country³³⁴ (but not fined). But when a person (of any of the three castes other than brāhmaṇa) is frequently guilty of perjury he should be fined and given physical punishment (as cutting the tongue or death) and a similarly guilty brāhmaṇa should be fined and banished (or degraded by being carried naked through the streets or deprived of his house). The Mit. on Yāj. II. 81 says that when Manu prescribes (VIII. 380) that a brāhmaṇa guilty of a sin is not to be awarded death or corporal punishment and that he is to be banished with all his wealth, he refers to the brāhmaṇa being a first offender and not a confirmed one. Manu VIII. 108 says 'where within seven days from deposing in a cause a (serious or painful) disease or fire or the death of a relative befalls a witness, he should be (being held as a false witness owing to these portentous happenings) made to pay the debt in dispute to the opposite side and a fine to the king.' The Sm. C. (II. p. 94) explains that this applies to a witness who is the only one on a disputed matter such as a messenger and the king or judge should wait for seven days to see whether any of these calamities befalls that witness and then hold him to be perjured. Kāt. (410) contains³³⁵ a similar rule, but he states that the king should wait one, two or three weeks or up to 45 days according to the value of the matter in dispute and the caste of the deponent. Manu VIII. 117 (= Visṇu Dh. S. VIII. 40) prescribes that in

332. कूटस्थः कूटसाक्षी ब्रह्मदा च समः स्मृतः । बुद्ध. q. by म. p. 135.

333. येन कार्यस्य लोभेन मिथिहाः कूटसाक्षिणः । पृहीत्या मरुच सर्वस्य दुर्प्राप्तिर्वि-
वर्धतः ॥ कात्या. 407 q. by अपराजित p. 672. स्मृतिच. II. p. 93.

334. The *Mitā* explains विवासन in वा. II. 82 as follows 'विवासनं च
नग्निकारणमुद्गममुद्देशमिवातनलक्षणं विषयानुसारेण द्रष्टव्यम् । इत्येवौ स्मृतिगुणद्वयद्वन्द्व-
वानासम्भवे स्वजातुचितकर्मकरणमिदमव्ययकारावृत्तयेनादि द्रष्टव्यम् ।' Vide *Mitā*-
on वा. II. 81 for three meanings of विवासनेत्.

335. सप्ताहात् पक्षेयं च सप्तद्वयं वदेत् । रोषोऽग्निज्ञातिविरुद्धं द्विसप्ताहविरुद्धं
वा । यद्व्यवहारिके वापि द्रष्टव्यत्वादिभेदतः ॥ कात्या. 410 q. by म. च. p. 149.

whatever lawsuit it is established that witnesses perjured themselves, the judge should hear it again (from the beginning) or if the suit has ended he should set aside the decision and examine it again.

Gaut. 13. 24-25, Vas. 16. 36, Manu VIII. 104, Yaj. II. 83, Viṣṇu Dh. S. VIII. 15 prescribe that a witness may depose falsely in a cause when, if he were to speak the truth, a person of the four varnas is liable to suffer the sentence of death. Manu VIII. 105-106, Yaj. II. 83, Viṣṇu Dh. S. VIII. 16 prescribe that as a penance for the falsehood a witness of the three higher castes may offer three oblations of boiled rice to the goddess of speech (Sarasvatī) or he may offer into fire clarified butter with the mantras called Kūsmāṇḍa (Vaj. S. XX. 14-16 or Tal. A. X. 3-5), or with the three verses beginning with 'yaddeva devahadanam' or with the verse sacred to Varuṇa (viz. Rg. I. 24. 15, 'aduttamam varuṇa') or with three verses of which waters are the deity (Rg. X. 9. 1-3 'apo hi śtha'). Viṣṇu Dh. S. VIII. 17 adds that a śūdra guilty of perjury in the above case may by way of expiation feed ten cows for one day. It is strange that the dharmaśāstra works should permit perjury to save a culprit from being sentenced to death. Probably popular sentiment of old standing allowing the speaking of falsehood in certain cases was responsible for this. In the Mahābhārata frequent reference is made to the permission to speak untruth in ordinary life when one's own life or another's life is in imminent danger. Vide Śānti⁵³⁶ 45. 35, 109. 19. It is stated in Śānti 165. 30 that speaking falsely is not a sin in five cases viz. in jest, to women, at the time of (i. e. in bringing about) a marriage, for the preservation of great wealth and for one's life. Vas. 16. 36 mentions those five occasions somewhat differently. Vide Manu VIII. 112 also for a similar rule. But so old a sage as Gaut. (23. 29) implies that he disapproves of this sentiment⁵³⁷, when he states, 'according to some falsehood entails no fault (i. e. no expiation need be performed) in (bringing about or breaking promises made at)

536. वायव्यानेऽहने वाप्यमासयो वा परश्व च । दुर्बलेऽपि चैव स्वाह्निवाहकानेषु च ॥ शान्ति 34. 22; न नरोत्तममनुते विमर्शिते न खलु राजन विवाहकाले । न सुर्वे मात्मने । कीदृशार्थे यज्ञासुतत्वाद्गुरवत्कालि ॥ शान्ति 165. 30; यद्वाहकाले रतिर्नयेने वाप्यवचने सर्वप्रमाणद्वारे । विषय चायं ह्यहने वदेयुः यज्ञासुतत्वाद्गुरवत्कालि ॥ वसिष्ठ 16. 36. In अष्टि 32. 16 we have the verse न नरोत्तममनुते विमर्शिते न खलु राजन विवाहकाले । न सुर्वे मात्मने ॥

537. विवाहमनुत्तममनुते विमर्शिते न खलु राजन विवाहकाले । वी. 23. 29.

marriage, in sexual intercourse, in jest and in giving relief to one distressed'. Vide Gr. R. pp. 507-508 quoting Hārīta Dharmaśāstra on the same subject and mentioning four kinds of falsehood such as that by a witness, that in transactions of sale &c.

Nār. (IV. 235-236) states that when through³³⁸ the carelessness of the creditor (who dies) there is no document nor witness to prove a debt and the defendant denies it, then one of three methods (of proof) may be resorted to, viz. *codanā pratikālam* (dunning the debtor each time to repay), *yuktileṣa* (putting forth arguments) and *śapathu* (special oaths and ordeals)³³⁹. Kāt. (233 q. by Sm. C. II. p. 52 and Par. M. III. 91) has a similar verse. *Yukti* according to Nārada IV. 238 means³³⁹ 'the creditor should follow (the debtor) by arguments and by himself remembering and by reminding the debtor of the time, the place, the relation (subsisting between the two)'. Others interpret *yukti* differently, that is, it means 'logical reasoning'. Kāt. (214) defines³⁴⁰ 'yukti' as 'the ascertainment or knowledge of a *liṅga*' (i.e. a sign that leads on to an inference).

338. ममादाद्धिनो यत्र न ह्यहोर्ध्वं न साक्षिणः । अथ चापहृते वादी तयो कश्चिद्विधो विधिः ॥ चोदना प्रतिकालं च युक्तिलेखस्तथैव च । तृतीयाऽथवा प्रोक्तस्तैरेव साधयेत् क्रमात् ॥ अतीतं चोद्यमानो यः पतिङ्गयाश्च वदुचः । विचतुः पञ्चद्वयो वा परतोर्थे स दापयेत् ॥ नारद IV. 235-237; अधिनाऽपयितो यस्तु विधत्ते न प्रवीजयेत् । विचतुः पञ्चद्वयो वा परतस्त्वन्ममेव । कात्या. 386 q. by स्व. प्र. p. 165, which explains नारद as 'चोदनायाऽथनदानादिविषयकपेरणाया अप्रतिकालोऽपतिषेधः । सेवि पञ्चमस्य कृणादिसम्बन्धे न ह्यहोरात्र्यमात्र एव निराहुषां निराकरणादुत्तरस्थानेन सम्बन्ध इत्यर्थापत्तिविधया । त्रयानविधया वा कृणादिसम्बन्धे साधयेत् भवति ममाजम् ॥'.

338a. The printed text of Nār. IV. 236 reads चोदना प्रतिकालं च as separate words. The Sm. C. II. p. 52 explains that as meaning 'pressing or urging the debtor three, four or five times in the presence of third persons without the debtor protesting against the demand'. The Madanaratna and V. P. p. 168 appear to read 'चोदनाप्रतिकालश्च (equal to चोदना + अप्रतिकालः) and interpret 'if there is no denial or protest (by the debtor) when the creditor frequently demands the debt, then the court may presume that he is a debtor'. The Madanaratna explains 'चोदनाप्रतिकालः बहुकृतो धनं मे देहीति वेशाया अप्रतिकालः अनिराकरणम्'.

339. चोदनाप्रतिपत्तेः तु युक्तिलेखस्तथैव । देशकालार्थसम्बन्धपरिमाणक्रियाविधिः ॥ नारद IV. 238; स्मृतिक. II. p. 52 explains युक्तिलेख as 'अमुदिमं श्रेयो अमुस्मिन् काले अमुनार्थसम्बन्धेन वलरिणमेव तत्कर्मोपपृण्णं पृथीते स्वपेरणादिविधीर्धियायः'.

340. लिङ्गलेखस्तु युक्तिः स्वादिष्टानीति विधादयः । कात्या. (214) quoted by परा. मा. III. 91, स्वयंभारतार p. 43, स्व. प्र. p. 167 which explains लिङ्गस्य अङ्गिद्वयाद्यभिव्यक्तिर्यत्र तत्कालादुक्तत्वादेः तदर्थो निश्चयः तेन चाङ्गिद्वयाद्यभिव्यक्तम्.

It is stated by Brhaspati that *anumāna* (inference⁵⁴¹ or presumption), as a means of deciding a law suit, is of three kinds, but it is inferior to witnesses (vide note 433 above). Vyāsa (q. by Sm. C. II p. 95) states that *anumāna* is the same as *hetu* and *tarka*. V. P. (p. 167) remarks that (long continued) possession and the frequent urging by the creditor both lead to the inference of title and the taking of a loan respectively and are therefore to be comprehended under *yukti* according to the definition of Katyāyana. Yet by popular usage *yukti* is restricted to presumptions arising from certain circumstances on the analogy of the maxim of 'goballavardā' explained below under 'steaya'. *Yukti* therefore means circumstantial evidence from which an inference may be drawn about a fact in issue in a judicial proceeding. Āp. Dh.⁵⁴² S. II 11. 29. 6 says that in case of doubt (judges) should decide from signs (i. e. by inference) or divine proof (ordeals). Vas. 19. 39 mentions the view of some sages that one who is found armed or wounded or in possession of the booty (stolen) may be declared to be (the thief or offender). Manu IX. 270 (= Matsya 227. 166) requires the just king not to condemn to death one accused of theft unless his guilt is proved as certain by proof that the accused had in his possession the articles stolen and tools for theft (for house-breaking). 'An adulterer is proved⁵⁴³ to be so by being caught in such acts as playing with the hair of another's wife, an incendiary by being caught with a firebrand in his hand (near the house set on fire), a murderer by being found (near the murdered man) armed and a thief when caught with some of the articles stolen in his possession'—say Śaṅkha-Likhita⁵⁴⁴.

541. अनुमानं त्रिधा योक्तेः तदथा द्वैविकी क्रिया । वृह. १. ५७ परा. मा. III. प. ८७ ; माहिलेखपातमानं तु मातुषी त्रिविधा क्रिया । भद्राद्या धर्मेजान्ता च द्वैवी तत्रविधा । स्मृता । वृहस्पति १. ५७ स्मृतिच. II. प. ५०, स्वय. नि. प. ७३ and मदनमल (ms) which latter remarks 'अथ सुक्तेः पृथगभिर्दोषोऽनुमानेनतर्माणात् ।', स्वय. नि. प. ७३ quotes वृहस्पतिः अनुमानं तु द्विविधं and explains सुक्तिः कैश्चिद्विषयेष्वभिधेया स्वयमेतुः । मा तु कामः शिलेकादिकमप्यभिधेयत्वात् अनुमानमप्यति, अनुपपद्यमाना वा कल्पयतीत्यनुमानं द्विविधमिति सुक्तोक्तौ ।

542. मन्देरे सिद्धन्ते द्वेवेनेति (चित्तिच. ५. अथ. च. II. ११. २९. ६)

543. किमकिमिदमनुमानं तदथा द्वैविकी क्रिया । उक्ताहन्ताऽऽहन्तः । शङ्खपाणिर्वाहन्तः । शङ्खपाणिर्वाहन्तः । वृहस्पति १. ५७ परा. मा. III. ११९. स्मृतिच. II. प. ९५, स्व. प. १६६.

544. Compare sec. 114 of the Indian Evidence Act which lays down how a court is to draw presumptions of fact from the common course of natural events in relation to the facts of the case before it. Illustration (a) to which is 'the court may presume that a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession'.

Kaṭ.³⁴⁵ IV. 12 and Yāj. II. 283 similarly say that adultery may be inferred from (the man and woman) being caught in the act of dalliance with the hair or from the signs left (such as marks of nails or teeth on the lips, cheek &c.) after carnal enjoyment or from the admission of the woman concerned (or of both). Nār. (IV. 172-175) declares that there are six kinds of disputes in which the indications (or circumstances) themselves serve as witnesses and lead to a conclusion without the testimony of witnesses viz. one found with a fire-brand in his hand (near the scene of arson) may be inferred to be the incendiary, one armed³⁴⁶ (found near the scene of murder) as the murderer, one caught dallying with the hair of another's wife as an adulterer, one with a spade in his hand near a breached embankment as the person who caused the breach in it and one armed with an axe as the feller of a tree, a person guilty of an assault may be inferred to be so from visible signs (such as his club or sword being smeared with blood). But Nār. IV. 176 gives the warning that in such cases it is necessary to be careful in arriving at a conclusion, since a person in order to bring into trouble another whom he hates may create marks of injury on himself. Kāṭ. (337-338) further provides³⁴⁷ that where one litigant proves as against his opponent (such as a debtor) either the offer of a bribe, or the effacing of the means of recognition (such as effacing one's signature on a document) or holding out temptations (to the witnesses or *sahyās*) or the concealment of his wealth (to avoid its being attached in execution of a decree), there the original claim (such as a debt) may be presumed to be proved even if he (the opponent) denies his liability.

345. केशकेशिकं संग्रहणम् । उपलिङ्गनाद्वारं करीरोपमर्मानां उज्जलेभ्यः क्षीरच-
नाद्वारं । कौटिल्य IV. 12.

346. Best on 'Evidence' (12th ed. 1922) sec. 294 cites as an illustration of circumstantial evidence the fact of one armed being regarded as the probable murderer in certain cases. Compare Wills on 'Circumstantial evidence' (7th ed. of 1937 English and Indian combined) p. 145 'Amongst the most forcible of presumptive indications may be mentioned all attempts to pollute or disturb the current of truth or justice, or to prevent a fair or impartial trial by endeavours to intimidate, suborn, bribe or otherwise tamper with the prosecutor, or the witnesses or the officers of justice, or by the concealment, suppression, destruction, alteration of any article of real evidence'.

347. द्वां पञ्चापमानेन्द्रः संद्वेष्टोभक्तिरात्र वा । विज्ञापनदने चैव हेतवो हि विभा-
वकाः । एवामन्यतमो यच्च वादिना मायितो भवेत् । मूलक्रिया तु तत्र स्याद् भाविते वादि-
निष्ठे च कात्या. (337-338) q. by अ. य. p. 169, विवाद्यचन्द्र p. 185 (only the first),
which reads विज्ञापनमनम्.

Judges often repeat from the Bench the words 'witnesses may lie, but circumstances cannot'. But this so-called maxim is often dangerous. Circumstantial evidence leads to conclusions that are in several instances false. The ancient Hindu lawyers were quite aware of the dangers of drawing inferences from circumstantial evidence. Nārada's warning has already been mentioned (p. 356). Kaut.⁵⁴⁸ (in IV. 8) remarks: 'even one not a thief may by chance be on the way by which thieves pass and one meeting thieves is seen to be apprehended as a thief because he is mixed up in dress, arms and articles carried with the thieves or is found near the articles stolen, just as Māṇḍavya though not a thief declared himself to be a thief for fear of being subjected to torture; therefore (the king) should punish one only after thorough examination'. Māṇḍavya's is a leading case on the danger of relying on purely circumstantial evidence. Brhaspati⁵⁴⁹ also remarks that 'a decision should not be arrived at merely by relying on the words of texts; for, if judges come to a conclusion without applying careful reasoning, loss of dharma results; a thief is held to be not a thief and a good man is held to be a wicked one in a judicial proceeding (not arrived at with proper reasoning). The sage Māṇḍavya was held to be a thief on account of the decision being arrived at without proper reasoning'⁵⁵⁰.

The 9th Act of the *Mṛcchakatika* is a standing literary condemnation of conclusions about guilt drawn from circumstantial evidence and of how judicial procedure is vitiated (of *vijāhāra-duṣṭatā*, as the author says in Act I).

Nar. IV. 289 provides that when even circumstantial evidence and presumptions therefrom do not enable the court to arrive at a decision, the judge should press the litigant with

548. इदंते द्विचोरोपि चोरमामे पटुपुत्रा संनिपाते चोरवशशब्दमन्वसामान्येन युक्तमामो दसः, चोरमण्डस्योपपत्तेन वा यथा हि माण्डव्यः कर्मज्ज्ञानमवाप्नु चोरश्चेत्, रीतिरिति प्रमाणः । तस्मात्समाप्तकरणं नियमयेत् । कौटिल्य IV. 8.

549. केवलं शास्त्रमात्राय न कर्तव्यं हि निर्णयः । बुद्धिहीनविचारे हि धर्मज्ञाने प्रज्ञायते । चोरीदचोरः माण्डव्यापुत्रोपते स्ववहारतः । बुद्धि विना विचारेण माण्डव्यश्चोरीत्यतः ॥ इह. q. by sv. u. pp. 13-14, पर. म. III. p. 39. The *स्मृतिच.* II. p. 25 quotes a verse of नारद (I. 42) 'यारयचोरोपि चोरत्वं चोरव्यापारयचोरतमः । अचोर-चोरतां वानो माण्डव्यो स्ववहारतः ॥'. Vide note 332 above for other references to माण्डव्य.

550. Wills' work 'Principles of circumstantial evidence' (English and Indian ed. combined, 7th ed. pp. 39-48) contains a lucid exposition of the value and defects of purely circumstantial evidence.

śapathas (oaths and ordeals) according to the place, time and strength of the litigant, such as fire, water, his spiritual merit and others. Manu VIII. 109 also says that when there are no witnesses the truth would have to be found out by śapathas. Divine proof is called *daivikikriyā* or *samayakriyā* (Visnu Dh. S. IX. 1). Some writers make a distinction between śapathas (special oaths) and ordeals (*daigas*), others (like Manu VIII. 109-114, Nār. IV. 239) do not. For example, the Vivādacandra quotes Nār. IV. 247 'when there is no witness in a dispute between litigants, there the judge should decide by means of ordeals⁵⁵¹ and various śapathas'. Acc. to the Mit. (on Yāj. II. 96) and S. V. (p. 106) both special oaths and ordeals are divine proof (*daiga pramāṇa*), but in disputes of small value śapathas (oaths) were generally employed, while ordeals were resorted to only in serious disputes or crimes. The Mit. (on Yāj. II. 96), the V. May. p. 46 and V. P. (p. 170) state that ordeals are those that generally end in immediate decision of the dispute, while śapathas take time for decision (because after the oath the king has to wait for a week or more to see whether a calamity befalls the person taking the special oath). Vyāsa quoted by Sm. C. II. p. 96 employs the word śapathas for both special oaths (taken as to one's 'satya') and ordeals like balance. Sankha-Likhita state that divine proofs are the balance, eating poison, entering fire, holding a piece of (hot) iron, offering one's merit acquired by sacrifices and charity and the king should make him undergo other śapathas⁵⁵². Bṛhaspati says that where documents or witnesses do not lead to a certain decision or where inference from circumstantial evidence also is confusing, there the matter is to be decided by divine proof⁵⁵³.

Special oaths were taken not only in judicial proceedings, but also in ordinary dealings to clinch one's assertion or to clear one's character or reputation. Nār. (IV. 343-344) refers to

551. यदा साक्षी न विद्येत विवादो यदा न स्यात् । यदा दिव्यः परिक्षित इत्येव दृष्ट-
विधयः ॥ नारद IV. 247 q. by विवादचन्द्र p. 112 and म. वि. p. 106. अर्थसमा-
पन्नाः स्तुताः साधयद्वादेयः ॥ स्वाम् in स्तुतिच II. 96.

552. तत्र दिव्यं नाम तुल्यधारणं विवादान्प्रविशेति । लोकाधारणमिहाहृतं यदा न स्यात्
इत्यथान् कारयेत् । शङ्खलिखित q. in वरा. म. III. p. 151, स्तुतिच. II. p. 96, अपराक्ष
p. 694. The स्प. नि. p. 140 reads विवादान्मरणं पक्षेति and दृष्टापूर्तापरयन्मान्.

553. लिखिते साक्षिवादे च सन्दिग्धवर्षे जायते । अनुमाने च सम्भागे तत्र दिव्यं
विशोधयन् ॥ दृष्ट. q. by स्प. म. p. 333, अपराक्ष p. 629, विवादचन्द्र p. 111 (reads
यत्कल्पयेत् as the last word).

the special oaths taken for clearing themselves by Vasiṣṭha when he was suspected to be a *yātudhāna* (a demon or sorcerer) and by the seven sages together with Indra, who (sages) were suspected to have stolen lotus fibres (by each among them⁵⁵⁴). Manu VIII 110 also speaks of the *sapatha* taken by Vasiṣṭha before Sudās, son of Pijavana (when the sage was charged by Viśvāmitra with the offence of devouring his own hundred sons), Nārada (IV. 243) refers to Rg. VII. 104. 15-16 in the first of which Vasiṣṭha made the imprecation,⁵⁵⁵ 'May I die this very day if I am a *yātudhāna* or if I injured the life of a human being! May he who falsely addressed me as *yātudhāna* be deprived of his ten valiant sons'! Manu VIII 110 also refers to the same hymn⁵⁵⁶. Manu VIII 113 (= Nār. IV. 199) referred to above (p. 343) states the various oaths to be taken or administered to the parties according to their respective castes. Manu VIII 114 further provides for special oaths for litigants by touching the heads of their sons and wives. That *sapatha* taken by *satya* was common in very ancient times appears from Pāṇ. V. 4. 66 (*satyaśāstapāṭhe*).⁵⁵⁷ Nār. IV. 249 prescribes that in charges of grave offences ordeals may be resorted to and *sapathas* in matters of small moment. Nār. IV. 248 mentions 'truth, horses and arms, kine, grains and gold, the feet of (the images of) gods and the ancestors, acts of charity and good deeds (*sukṛta*) are to be employed in *sapathas* as declared by Manu.' Brhaspati⁵⁵⁸ enumerates the special

554. In the Anuśāsanaparva 93. 13-35 it is narrated that each of the seven sages suspected the others of the theft of lotus-fibres and that they cleared themselves by taking oaths. Indra is said to have taken an oath when he was the subject of suspicion in relation to Ahalyā. Vide Best on 'Evidence' (12th ed. of 1922) pp. 42-45 sections 56-59 for the employment of oaths in all ancient societies in courts as well as outside, for the forms and sanctions of oaths and for the arguments urged against their use.

555. अथा हृदिप वादि पातुधानो अस्मि यदि वायुस्तप्त दृक्स्वरूपः । अथा स वीरिर्दृष्ट-
भिर्नि पूवा वाः ना मोघं पातुधानवाहः ॥ अ. VII. 104, 15. The बृहदेकता (VI. 33-34)
refers to the story thus. वज्रदंष्ट्रा तु सुकरम अष्टम्भा चैनं पाशभिः । कुन्दाक्षपशितानां
शयने निक्षपञ्चिवः । इते पुत्रशते तस्मिन् वसिष्ठो द्रुग्भित्तत्वा । रक्षोचूलेन शत्रूणां सुवा-
सेनेति च श्रुतिः ॥

556. The story of king Kalmāṣapāda cursed to be a demon by Sakti, eldest son of Vasiṣṭha, who then devoured one hundred sons of Vasiṣṭha is narrated in Ādiparva 176 (cr. ed. 166).

557. On सत्यपदशपथे, the काशिका says: सत्यशब्दोऽख्यतमनिपुणवचनः । कश्चि-
चक्षपथे च वर्तते सत्येन शपथोद्वेयमिति । तस्याप्य प्रतिषेधः । सायाकरोति नाप्यं वणिक् ।
मयैतः केतव्यमिति तस्य करोतीत्यर्थः । अशपथ इति किम् । सत्यं करोति नाह्वयः ।

558. सत्यपादुल्लङ्घ्याणि शोधनकल्पाणि च । देवनाह्वयपादाश्च पुत्रदारक्षितानि
च । एते तु शपथाः योक्ताः स्वल्पैरेव सुकराः सदा ॥ बृह. 10. स्मृतिच. II. p. 96. परा- वा-
III. p. 151.

oaths mentioned by Manu and Nār. and adds that they are to be employed in small matters (civil and criminal). The *Vīṣṇu Dh. S.* (IX. 5-10) prescribes that when the litigant is a *sūdra* and the dispute relates to a matter worth less than one, two, three, four or five *kṛṣṇalas* he should swear respectively by holding in his hand *dūrvā* grass, sesame, silver, gold or earth taken from ploughed land, that (IX. 11-12) beyond that value various ordeals may be offered and that oaths with similar objects in the hands may be offered to *vaiśyas*, *kṣatriyas* and *brāhmanas* when the value of the subject matter is double, three times or four times of the value in the case of a *sūdra*. Manu VIII. 111 gives the admonition that a wise man should not make a false oath, because by so doing he incurs loss (of reputation) here and after death (by falling into Hell). Yāj. II. 236 prescribes a fine of 100 *panas* for one who takes an improper or profane oath⁵⁵⁹.

The benefit of doubt is to be given, according to modern ideas on the administration of justice, to the accused. This principle was put forward several centuries before Christ by Āp. Dh. S. II. 5. 11. 2 'the king should not punish when there is a doubt' (about a man's guilt⁵⁶⁰).

559. The Mit. explains 'यश्चायुक्तं मातरं गमिष्यति तेषां शपथं करोति।'

560. न च सन्देहे दण्डे कुपयति। आप. ध. सू. II. 5. 11. 2.

CHAPTER XIV

ORDEALS

A brief history of ordeals may be set out here. Rg. I. 158. 4-5, wherein⁵⁶¹ the sage Dirghatamas, son of Ucatha, prays that the fire of faggots heaped tenfold may not burn him and that the rivers in which he was thrown bound hand and foot may not engulf him, are regarded by some as a reference to the ordeal of fire and water. Yet in those verses there is probably no reference to ordeals, but to the cruel treatment of Dirghatamas by *dāsa*s headed by Traitana. Rg. III. 53. 22 also, where it⁵⁶² is said 'he heats the axe (or acc. to Sayana 'just as the tree is injured by contact with the axe &c. ')', does not contain a clear or certain reference to the ordeal of holding the heated axe. Atharvaveda⁵⁶³ II. 12 is held by several Western scholars to contain a reference to the fire ordeal. This also is far from certain, though verse 8 may lend some support to that view⁵⁶⁴. The Pañcaviṃśa (or Tāṇḍya) Brāhmaṇa 14. 6. 6 refers⁵⁶⁵ to the story of Vatsa, who was abused by his step-brother that the former was the son of a *sūdra* woman, against which Vatsa protested, urged that he was a brāhmaṇa, entered fire to prove the truth of his assertion and came out of fire unscathed. This is referred to by Manu VIII. 116. This is probably the earliest

561. मा गमिष्ये दशतपाशितो धातुं न पद्मो नक्षत्रमग्नि आदति क्षात् ॥ न मा गरुडयो नातुलमा द्वाता पद्मी सुतमन्धनपाशुः । अ. I. 158. 4-5.

562. परशुं चिह्नि वपति शिखरं चिह्नि वृक्षति । उज्ज्व चिह्निवत् वेपन्ती प्रपतता केनमरयति ॥ अ. III. 53. 22.

563. आ दधानि ते पदं समिद्धे जातवेदसि । अग्नि शरीरं वेदेद्वत्सं वापति नष्टतु ॥ अथर्ववेद II. 12. 8.

564. Vide Proceedings of the American Oriental Society, vol. XIII pp. CCXXI-XXVI where, after referring to the views of Ludwig (III. p. 445), Weber (Indische Studien XIII. p. 164) and Zimmer (Altindische Leben, p. 184) about the mention of the fire ordeal in the above hymn, it is sought to be proved that the hymn refers to re-establishing a soiled reputation and reliance is placed on the Kauṣikaśūtra (47. 25 ff.) which does not treat it as a fire ordeal hymn.

565. वत्सश्च वै मेधातिथिश्च कावशपाशां ते वत्सं मेधातिथिराकोशद्वयाद्वयोसि शुभ्रा-
वृक्ष इति । सोमवीर्यतेनाग्निं वपयत् पततो गौ बह्वेदामिति । वास्तेन वशतो वपेन्मेधातिथेन
मेधातिथिस्तप न एतं च गौवत् । त. पञ्चमहाब्राह्मण 14. 6. 6.

and clearest reference in ancient Sanskrit Literature to the fire ordeal. Next comes the reference to holding in the hand the heated head of an axe by a person accused of theft to prove his innocence contained in the Chāndogya⁵⁶⁶ Upanisad VI. 16. 1. Āp. Dh. S. II. 11. 29. 6 refers to inference and divine proof (quoted above n. 543). In another place (II. 5. 11. 3) Āpastamba states that after carefully considering (the charge before him) by means of divine proof and questioning (of witnesses) the king should set about awarding punishment. Śāṅkha-Likhita (n. 552) name four ordeals, viz. those of balance, poison, water and holding red-hot iron⁵⁶⁷. Manu VIII 114 mentions only two viz. the holding of fire (i. e. red-hot iron) in the hand or plunging in water, but Nār. IV. 251 states that Manu declared five kinds of ordeals. Yāj. II. 95, Viṣṇu Dh. S. IX-XIV and Nār. IV. 252 mention five viz. balance, fire, water, poison and *kośa* (consecrated water). Nārada, however, knew two more viz. *taptamāṣa* (IV. 343) and *tanḍula* (IV. 337). Brhaspati (S. B. E. vol. 33 p. 315 verses 4 and 5) and Pītāmaha speak of nine (Aparārka pp. 628, 694 respectively).

Yāj. II. 95-113, Viṣṇu Dh. S. IX-XIV, Nār. IV. 239-348, Kat. 411-461, Śūkra IV. 5. 233-270 treat of the several ordeal⁵⁶⁸ Pītāmaha contained, as the quotations from the digests show, the most elaborate treatment. That ordeals had attained great vogue in the early centuries of the Christian era is shown by the Mreechakatika Act IX. 43 (where the ordeals of poison, water, balance and fire are expressly named) and by Bāṇa who mentions the same four in Kādambarī, para 47⁵⁶⁹. Among the digests and commentaries the Mitākṣarā, the Smṛticandrikā, the Divyatattva of Raghunandana, the Vyavahāramayūkha and the Vyavahāraprakāśa contain the most elaborate treatment of ordeals⁵⁶⁹.

566. दुर्बलं सोम्येत दहतपुहीतमानमन्वपहादीन् स्वेवमकार्षीद् परछुमस्मै तपतेति स यदि कस्य कर्ता भवति तत् पचायुतमात्मानं कुर्वते सोऽमुवाचिसम्बोऽयुतेनात्मानमन्वपहाद् परछु तस्य मतिपुष्टाति स वृद्धतेऽथ हन्पते । शांख्योप VI. 16. 1.

567. यथाद्या धर्मज्ञानमया देवी नचविद्या क्रिया । बुद्धिः प. by अपराको 628; धर्मो विद्यया चैव विषं कोशाच्च वज्रमः । वज्रे च तप्तदुहः धोके सप्तमं तप्तमाषकम् । अष्टमे पात-मिषयुक्तं नयमं धर्मज्ञं मवेत् । पितामह प. by अपराको p. 694; the same verses are quoted as बुद्धस्पति's in दिग्विजय p. 574 and न्य. म. p. 43.

568. वनकविणी कारिदेवः जडिनामद्विधारणं तद्वानां तुलारोहणमनस्योद्भवे निपुण्युद्धि । कादम्बरी para 47.

569. Those interested in the farther study of ordeals may consult my translation of and notes on the Vyavahāramayūkha.

Divya is defined as 'that which decides a matter (in dispute) not determined by human means of proof' (V. Mayūkha) or 'that which decides what cannot be or is not to be decided by human means of proof' (*Divyatattva*⁵⁷⁰ p. 574). *Medhātithi* on *Manu* VIII. 116 discusses the question how ordeals can be relied upon for the discovery of truth. The objection is raised that fire and water are natural forces that act in a uniform way and are not intelligent beings which may change their minds by an appeal to them. Therefore, the objector says, ordeals and oaths are like magic and are only meant to frighten the parties into telling the truth. It is further objected that thieves may (by some trick) not be burnt in the fire ordeal and good men are seen to suffer burns. The reply is: the usefulness of ordeals cannot be negated by these examples of failures, as they are not frequent and as even direct perception and inference sometimes lead to uncertain results. No one, however, says that these latter should not be relied upon. Just as one relies on witnesses in deciding a matter (who may for aught one knows be telling lies), so reliance can be placed on ordeals. Where there is failure in case of ordeals, it must be held to be due to the results of the performer's actions in past lives. The general rule as stated by *Yaj.* II. 22, *Nār.* II. 29, IV. 239, *Brhaspati*⁵⁷¹, *Kat.* (317) and *Pitāmaha* is that ordeals were to be resorted to only if no human evidence (witnesses, documents, possession) or circumstantial evidence was available. *Kat.* (218-219) prescribes that⁵⁷² if one party relies on human means of proof and the other on divine proof, the king (or judge) is to accept human means and not divine and that if human means of proof reach (i.e. are able to establish) only a part of the allegations (in the plaint), then human means should be accepted and no divine modes of proof, even though they may be complete (i.e. completely cover all allegations). When *Nār.* II. 30 (= IV. 241) states that divine means of proof are to be resorted to when a transaction takes place in a forest, in

570. इह मातृव्यममाणाभिर्देवताभिर्निर्णयके पक्षद्विषमिति लोकमस्तिहम् । अविना मातृव्यममाणाभिर्देवताभिर्निर्णयके पक्षद्विषमिति सुखितम् । द्विषमत्तम् p. 574.

571. ममानुहीने तदेतु निर्विषा देविकी क्रियाः । ब्रह्म. in *यज.* p. 169; संभवे साक्षिणां मातृ देविकी बलयेत् क्रियाम् । कात्या. in *स्युतिच.* II. p. 31; परिमन् परिमन् विवादे तु साक्षिणां नास्ति सम्भवः । साहसेषु विशेषेण तत्र द्विषमिति बलयेत् । पितृमह in *स्युतिच.* II. p. 95.

572. यदेको मातृयी ज्ञपाद्वयो ज्ञपात् देविकीम् । मातृयी तत्र सूचीपात्र तु देवी क्रिया सुपाः । यदेकदेशपात्राणि क्रिया विद्येत मातृयी । साहाय्या न तु सूचीपात्र देविकी पक्षो सुपात् । कात्या. in *मिता.* on *यज.* II. 22 and *यज.* p. 315.

a lonely place, at night, inside a house, in cases of *sāhasa* and when a deposit is denied, or when Kāt. (230) prescribes that trial by ordeals is to be resorted to in the case of persons accused of committing *sāhasa* in secret (i.e. by wearing masks &c.),⁵⁷³ those words only apply where it is impossible to have human evidence. Kāt. (229) states an exception to this viz. when the dispute⁵⁷⁴ investigated is about *sāhasa* or about assault or abuse and defamation and in causes that spring from the use of force there is an option that witnesses or divine proof may be resorted to. Nār. IV. 242 states that divine proof could be resorted to when the chastity of women was in question, in theft and *sāhasa* and in all cases of the denial of monetary liability. Sītā's ordeal of fire at once comes to mind as an illustration of Nārada's rule. Brhaspati⁵⁷⁵ and Pitāmaha say that in disputes about immoveable property divine proof should be avoided, which does not forbid *divya* altogether, but only where the evidence of neighbours or of a document is available and that in the latter case even if the defendant offers to pay a fine if he fails by the divine proof, *divya* is not to be resorted to. The ordinary rule was that ordeals were to be administered to the defendant⁵⁷⁶ (Kāt. 411 = Viṣṇu Dh. 8. IX. 21). But Yāj. II. 96 gives an option that any one of the two litigants may by mutual agreement undergo an ordeal and the other should agree to pay on defeat a fine or undergo physical punishment. This means that human proof is adduced to prove a positive proposition, that divine proof may be resorted to prove a negative proposition as well (e. g. a defendant denying the claim for a debt may prove by *divya* that he did not borrow a loan). Making an offer to pay a fine or undergo corporal punishment is said to be being *śirṣakaṣṭha*⁵⁷⁷ or *śirāṣṭha*

573. गृहद्वाराभित्तिगतानां तु मासे दिग्भ्यः परीक्षणम् । कात्या. q. by मिता. on या. II. 22, स्मृतिसं. II. p. 51.

574. एकाग्रते साक्षसे चेदे वाहये दण्डवाचिके । यतोऽपुनरेषु कार्येषु साक्षिणो विपश्येय वा । कात्या. in मिता on या. II. 22, अथार्क p. 629, स्मृतिसं. II. p. 51.

575. स्वायम्भु विवस्वतेषु विपयानि पवित्रयेत् । वितामह in मिता. on या. II. 22, स्मृतिसं. II. p. 53. वाक्यः स्वयं मदीवादे निषिद्धा द्वैविकी क्रिया । गृह. q. by अथार्क p. 629, स्मृतिसं. II. p. 53.

576. न कश्चिदभियोगार्थं विप्रेषु विनियोजयेत् । अभियुक्तोऽपि दातव्यं विषयं विप्र-विज्ञातैः । कात्या. q. by अथार्क p. 695, परार. म. III. 152, स्व. म. p. 172.

577. On शीर्षकस्थेऽभियोगेति (या. II. 95) the मिता. explains 'शीर्षकं शिरस्यवधारणं चतुर्थः पादो जयपराजयलक्षणत्वेन च दण्डो लक्षणे तत्र तिष्ठतीति शीर्षकस्थः तत्रादुक्तदण्डभाविन्यर्थः'. *Śirax* (head) indicates the fourth stage of a law-suit viz. success or defeat and since fine is imposed on the defeated party, it indicates fine or corporal punishment.

(in Yāj. 95, Viṣṇu Dh. S. IX. 20, 22, Pītāmaha, Nār. IV. 257, Kāt. 412-413). Yāj. II. 95 prescribes that the ordeals of balance, fire, poison and water were to be prescribed in disputes of great value and not elsewhere and in II. 99 he says that all claims above 1000 paṇas (of copper) are to be regarded as of great value, but in charges of treason and of the committing of any one of the five grave sins (*mahāpātakas*) any one of these four ordeals may be resorted to without regard to value and without any offer to pay fine on defeat. So also these four ordeals were to be offered to the defendant where the plaintiff offered to pay a fine on defeat. The ordeal of *kośa* was allowed in all claims whether of high value or low value or whether the plaintiff offered to pay a fine on defeat or not.

Yāj. II. 98 states that the ordeal of balance should be given to women, a minor (under 16), a very old person (above eighty years), the blind, the cripple, brāhmanas and the diseased; the fire ordeal (i. e. heated ploughshare and heated māsa) to ksatriyas, water ordeal to vaiśyas, poison to śūdras. Nār. IV. 335 assigns ordeals to the different varṇas similarly. Nār. IV. 256 prescribes that ordeals should not be undergone by those who are observing a vow, who are much distressed or who are performing austerities, and by women. Pītāmaha quoted by Mit. (on Yāj. II. 98) adds minors and old persons to these. The Sm. C. II p. 103 explains this as referring to the ordeals of fire, poison and water only. Another Smṛti (q. by Mit. on Yāj. II. 98) prescribes that the ordeals of balance and *kośamā* be offered to women, minors and the others mentioned above. There is in all these rules a spirit of tolerance, kindness and concern for the weaknesses of mankind. Kāt. (423) holds⁵⁷⁸ that persons of the higher castes who are cowherds, traders, artisans, bards, domestic servants and usurers should be given ordeals as if they were śūdras. Kāt. (422) allows all ordeals to members of all castes, except that brāhmanas are not to undergo the poison ordeal. Kāt. (424-426) prescribes that the ordeal of fire should not be offered to blacksmiths or those who are leprous nor of water to those who ply boats or who suffer from difficulty in breathing or cough, nor poison to those who are experts in incantations and *yogic* practices or who suffer from (excess

578. गोरक्षकान्वाणिसंकांतया काचकुशीलवान् : देवदत्तापुत्रिकाश्चैव साहचर्य-
वद् द्विजान् : कात्या. q. by अथर्ववेद p. 698, न. वि. p. 150.

of) bile or phlegm, nor *kośa* to those who are drunkards, to persons fond of women, to gamblers and to those who are atheists. Viṣṇu Dh. S. IX. 25, 29 and Nār. IV. 255, 332 contain similar provisions. Kāt. (427-430) further provides that no ordeal should be allowed to be performed personally by the following persons, viz. those charged with the murder of their father, mother, a brāhmana, their teacher, a minor, a woman and the king; those guilty of the (five) grave sins; particularly those that are atheists; those who wear (or subvert by) peculiar sect marks; great rogues; those who are experts in incantations and *yoga* practices; those who are the progeny of unions of persons of different varṇas; those who repeatedly engage in sin; in the case of these the king should offer ordeals to good men appointed by them on their behalf and if such good men are not willing then they should appoint their own relatives. Śāṅkha-Likhita also refer to the appointment of friends or relatives as representatives (Aparārka p. 842)⁵⁷⁹. Kāt. (433)⁵⁸⁰ lays down the following rather remarkable provision, viz. when untouchables, men of lowest castes, slaves, *mlecchas* and those born of mixed unions in the reverse order of the castes are guilty of crimes, the determination of their guilt (by the above mentioned ordeals) should not be made by the king; he should indicate such ordeals as are in vogue among them. The Sm. C. and Par. M. say that this applies

579. असालेमनिहिते दिग्धम् : अधवा निजैः सज्जनैरात्मजं वा शोधयेद्देव । स चेदण्डवीर्यिनी चार्थं दापयेत् । प्रह्वलितिवि. q. by अपरार्क p. 842.

580. अमृदवाधमदासनां म्लेच्छानां वापकारिणाञ्च । गतिहोम्यमृदवानां निधयो न तु राजनि । तस्मिन्निष्ठानि दिग्धानि संशये तेषु निदिशेत् । कात्या. q. by मित्रा. on वा. II. 99, स्मृतिच. II. p. 104, परा. मर. III. p. 161: 'तस्मिन्निष्ठानि सर्पघटादीनि' 'मय्यहारतत्त्व' p. 579: 'स्व. प. 180 'तस्मिन्निष्ठानि सर्पघटादीनि इति स्तुतिरप्ये' . In the Gadag Inscription of Vikramāditya VI. dated 1008 A. D. (E. I. vol. 13 p. 348 at p. 360 there is this passage 'we handle boiling water, we strike with the hand a great snake placed in a jar or we may well mount the balance'. In I. A. vol. 19 p. 242 at p. 246 it is stated in an inscription dated 1208 A. D. of the Mahāmāndaleśvara Kārtavīrya IV that Candrikā (or Candakadevi), the queen of Lakṣmidhara of the Rattas of Sugandhavarni (Saundattī) was a pativrati and got success by *ghaṭasarpa* 'माति श्वाभयवृणा पतिव्रततया देवी चिरं चन्द्रिका संयाता घटसर्पजातविजयं लब्धधीरमेवमी'. The Bombay Gazetteer vol. I part 2, p. 556 n. 3 gives a quotation from the Asiatic Researches vol. I. where the ordeal of putting a ring or coin in a vessel in which a snake has been already placed and asking a person to take it out is mentioned. Vide also Report of South Indian Epigraphy for 1924 para 66 for the ordeal of dipping the fingers in boiling ghee or oil.

only when they cannot secure relatives or other persons appointed by them to undergo the usual ordeals on their behalf. The Vyavaharatattva (p. 579) explains that the ordeals referred to among mlecchas and others are the snake in the jar and the like. This seems to have consisted in taking out a ring or coin with the hand from a jar in which a snake was placed; if there was no snake-bite or no effect even if the snake bit, the person was declared innocent. Vide note 580. Yāj. II. 97 and Nār. IV. 268, 320 prescribe that all ordeals are to be administered by the chief justice in the morning at sunrise or in the forenoon in the presence of the king, the sabhyas and brāhmanas. The Mit. adds that a Sunday is the proper day according to the usage of respectable people (*śiṣṭas*). Pītāmaha specially provides that the water ordeal should be administered in the noon and poison in the last watch of the night (Mit. on Yāj. II. 97). Certain seasons and months were either appropriate or inappropriate to certain ordeals e. g. Nār. IV. 254 states that the fire ordeal should be given in the rainy season, balance in the winter (*śiśira*), water in summer, poison when the season is cool. Nār. IV. 259 prohibits water ordeal in the cold season, fire in summer, poison in the rainy season and balance while the wind blows violently. The Mit. (on Yāj. II. 97) and Par. M. III. 162 quote Pītāmaha to the effect that the months of Caitra, Vaisakha and Mārgaśīrṣa are common to all ordeals, *kośa* and balance may be administered in all months.

As regards the place, Pītāmaha prescribes that ordeals are to be administered by the king or the judge appointed by the king in the presence of learned brāhmanas and the public (or the ministers)⁵⁸¹. Kāt. (434-35 and 437) provides:⁵⁸² 'ordeals should be administered in some well-known temple in the case of men accused of grave sins and near the royal gate in the case

581. न्यायसं द्वापयेद्विषयं राजा वाधिकृतोपि वा । ब्राह्मणानां सुनवतां पण्डितानां तथैव च ॥ विज्ञानम् in परा. म. III. 164, स. वि. p. 183.

582. इन्द्रध्वजान्दभिरुत्थानां महापातकिनो घृणाम् । सुपद्मोर्ध्वं मधुकानां राजद्वारे वयो-
जयेत् ॥ मातिलोम्यमसुतानां द्विष्यं देवं चतुर्वधे । अहोवेषु सनानस्ये द्विष्यं देवं विद्रुधवा ॥
अवेष्टकालदक्षानि बहिर्वासकृतानि च । स्वामिचारं सदाधेयं कुर्वन्तीह न संशयः ॥ कारपा. in
मिता. (on पा. II. 99), परा. म. III. 163, स्मृतिच. II. p. 103, स. वि. p. 183.

स्मृतिधर्मः नृपात्तुदेवतापतनयः स्मृतिच. II. p. 104 and स. वि. p. 183; 'इन्द्र-
ध्वजः इन्द्रध्वजसमानः' द्विष्यत्त्व p. 376; 'इन्द्रध्वजपूजास्थाने' स्व. प. p. 182. For
the festival of the banner of Indra, vide H. of Dh. vol. II, p. 395, 825-826.
On स्वमिचारं &c. the स्मृतिच. says 'विहितदेवतासनादरे दिव्यप्रमाणपदानिर्भवती-
त्याह स एव'.

of those charged with treason; in a public place where four roads meet in the case of those born of mixed unions in the reverse order of castes, in cases other than these in the hall of justice. When ordeals are administered in an improper place or at an improper time and when they are performed outside human habitation (in a lonely place) they fail as to the matter in hand (i. e. they cease to be decisive). Nār. IV. 265 prescribes that the balance should be planted in the hall of justice or at the royal gate or near a temple or where four roads meet.

The procedure common to all ordeals and described in the Mit. on Yāj. II. 97 and 99, the V. May. pp. 52-55, V.P. pp. 183-186 (all relying on Pitāmaha) and Vyavahāra-nirnaya pp. 148-53 (relying on Prajāpati, Pitāmaha, Br.) is briefly as follows:—In ordeals the chief justice is to do every thing at the king's bidding as the *adhvaryu* priest does in all sacrifices. He should observe a fast and the *sodhya* (person undergoing the ordeal to clear himself) is also to do the same. Both are to bathe in the morning and the *sodhya* was to have his wet clothes on. The Chief Judge is to invoke the gods to the accompaniment of music and to offer flowers, sandal-wood paste and incense. He should fold his hands, face the east and invoke Dharma to be present at the ordeal (Dharma being the principal deity in ordeals) and assign places to Indra, Yama, Varuna and Kubera in the four principal quarters from the east and to Agni and other guardians of quarters in the corners of the principal quarters. He is to contemplate on the eight deities of the eight quarters as having different colours (viz. Indra as yellow, Yama as dark &c.). He is to assign the eight Vasus (repeating their names) to the south of Indra, the twelve Adityas (repeating their names) between Indra and Isāna (i. e. between east and north-east), assign a place to the eleven Rudras to the west of Agni, assign a place to the seven Mother goddesses between Yama and Nirrti (between south and south-west), assign a place to Ganesa to the north of Nirrti, to the Maruts (seven) to the north of Varuna; to the north of the balance (or the place of other ordeals) he should invoke Durgā. All these deities are to be invoked with appropriate Vedic mantras (set out in V. May.). He should offer the several items of worship from *arghya* (water offered by way of honour) to ornament to Dharma (as the principal deity) and then to the subsidiary deities from Indra to Durgā (according to appropriateness) and then sandalwood paste, flowers, incense, lamp and *nivedya* to the deities from Dharma to Durgā. The

flowers for Dharma are to be red. Up to this is the work of the Chief Justice. Sacrificial priests should offer into fire in the four quarters 108 oblations of clarified butter, boiled rice and fuel sticks with syllable *Om* and the *Gāyatri* and with 'Om' and 'sāhū' at the end of each. Having written down on a leaf the subject matter for which the party is undergoing ordeal the leaf should be placed on the head of the *sodhya* with the *mantra*,⁵⁸³ 'the sun, the moon, the wind, fire, heaven and earth, waters, the heart, Yama, day and night, the two twilights and Dharma know (see or mark) the deeds of men'.

The several ordeals will now be briefly described.

First comes *tulā* or *dhātā* (balance). A sacrificial tree (such as *khadira* or *udumbara*) should be cut to the accompaniment of vedic mantras (employed in making a sacrificial post). Two wooden posts made of that tree should support a transverse beam (called *akṣa*). The posts should be fixed in the ground, the part above ground being four cubits and that below being two cubits. This frame should face the east (i. e. the posts must be in the south and north). Then the beam of the balance was to be made from the same tree and was to be suspended from the transverse beam of the frame by means of a hook. Three iron rings were to be fastened to the beam of the balance, two at the end and one in the middle for suspending the balance from the transverse beam by means of a chain or string. Two scales were to be suspended at the two ends of the beam by hooks and strings from the iron rings fixed at the ends of the beam. On the two sides of the balance there should be two arches in which the scales should move and which should be ten angulas higher than the balance. There should be two perpendicular pendants made of clay hanging down from the arches and touching the upper surface of the balance. In the pan to the west the *sodhya* should be placed and weighed against clay, bricks and stones placed in the other pan. Then traders or goldsmiths or braziers should examine the balance and bring it on a level with the two pendants hanging down from the arches and examine the perfect horizontality of the

583. The मन्त्र is आदिर्वचनद्वाराभिलोऽनलस्य जीर्णमिरापो हृदये धनस्य । अहस्य राक्षसि वच च मन्त्रे धर्मो वि आनाति सरसं वृणस्य ॥ आदिपर्व 74. 50. It is to be noted that *pitāmha* quoted by the *mitra* regards this verse of the *आदिपर्व* as a मन्त्र and *Praṣpati* quoted by the *Vyavahāranirṇaya* p. 153 does the same. Compare for a similar verse *Manu* VIII. 86.

beam of the balance by spilling a little water on the beam. When the person sitting in one pan is equal in weight to the materials (clay &c.) in the other, a line should be drawn with chalk by the experts on the arch (to show the exact position of the pans). Then the man is made to get down from the pan and he is to invoke the balance as stated in Yaj. II. 101-102. 'O balance, you are the abode of truth, you were created by the gods for this purpose, declare the truth, free me from this (cloud of) suspicion. Mother! If I am a sinner then take me lower, if I am pure take me upwards'. The person is then to hear exhortations about the result of untruth after putting the writing on his head (vide Nār. IV. 276 and Viṣṇu Dh. S. X. 9), then he is again to be placed in the pan to the accompaniment of invocations (Nār. IV. 278-279, Viṣṇu Dh. S. X. 10-11). A worthy brāhmaṇa learned in astronomy is to calculate the time of five *palas*⁵⁸⁴ or *vināḍis*. Then his weight is again to be marked. If the person goes up (i.e. is found lighter than what he formerly weighed) he is declared innocent (acc. to the com. on Nār. IV. 283, V. Mayūkha p. 60, Dipakalikā on Yaj. II. 102); if he weighs the same or goes down (i.e. weighs more) he is guilty. Then the person concerned is to distribute gifts to the judge, the brāhmaṇas and sacrificial priests and take leave of the deities invoked. Brhaspati (SBE vol. 33 p. 317 v. 19) states that he who weighs the same should be weighed once more. If the pan or the beam or the hooks break or the ropes give way owing to some visible cause then the procedure was to be repeated, but if the breaking is due to an unseen cause or accident, the person was to be declared guilty.

The ordeal of fire is as follows :—Nine circles with cowdung are to be drawn from west to east, they being meant for Agni, Varuṇa, Vāyu, Yama, Indra, Kubera, Soma, Savitr and all gods. Each circle was to be 16 *angulas* in diameter and the space between two circles was to be 16 *angulas*. In each circle kuśa grass was to be spread and the person to be tested was to plant his feet on them; ghee was to be offered into fire 108 times. A blacksmith by birth should heat in fire a ball of iron weighing 50 *palas* (16 *palas*⁵⁸⁵ in the case of a weak man) and eight

584. A *vināḍi* is the time required for reciting 60 long syllables and 60 *vināḍis* make one *ghaṭikā*. So five *vināḍis* will be equal to two minutes.

585. A *pala* weighed 320 *guṇjās* according to the Līlāvati (I. 4). Acc. to Divyavatara (p. 608) 20 *palas* were equal to 66 *tolakas*, five *māṣas* and 4 *guṇjās*, which, while accepting the view that a *pala* is equal to 320 *guṇjās*, gives the rather modern measurement into *tolakas* (*tolas*).

angulas in length till it becomes red-hot and emits sparks. Then all the details described above ending with the placing of the writing on the head of the *sodhya* are to be gone through by the judge and the fire (in the red-hot piece) is to be invoked with several mantras (such as Yaj. II. 104⁵⁸⁶ and Visnu Dh. S. XI. 11-12). The *sodhya* should stand in the first circle facing the east. Having made red marks on all sores of the hands of the *sodhya* on which grains of rice have been rubbed, he (the judge) should place seven leaves of the *atvatha* tree on them and also grains of rice and curds and should fasten round them threads. Then the judge should carry the red-hot iron piece by means of a pair of tongs and place it in the hands of the *sodhya* (that are covered with leaves). Then the *sodhya* holding in both his hands the red-hot piece should walk from the first to the eighth circle not hurriedly but slowly and at ease. Having reached the 8th⁵⁸⁷ circle he should throw the red-hot iron piece on to the 9th circle. Then the judge should rub on the hands of the *sodhya* rice grains and when the latter shows no hesitation at the rubbing and no injury on his hand at the end of the day he is declared to be innocent. Kat. (441) and Yaj. II. 107 provide that if the red-hot piece falls earlier (i.e. before reaching the 8th circle) or there is a doubt (whether his hands are injured or not) or if he loses his footing or is burnt elsewhere than on the hands he should again undergo the ordeal.

The ordeal of water as described in the *smṛtis* and digests is rather complicated. The Sm. C. (II. p. 116) remarks that⁵⁸⁸ as the ordeals of water and poison had gone out of vogue (in its day) it passes over the procedure of these and takes up the description of *kṣeta* ordeal after the fire ordeal. Having gone to a reservoir of water the judge should get erected on its bank a *toraga* (an arch) as high as the ear of the *sodhya* on an even and cowdunged plot. He should offer worship to Varuṇa (Lord of waters), to a bow of middling size and to three arrows (the points of which are made not of iron but of bamboo) with sandal

586. Before the red-hot iron is placed on his hands the *sodhya* repeats 'स्वमो सर्वभूतानामन्तरासि पावकः । साक्षिवत्तुल्यपापेभ्यो ब्रूहि सर्वं कवे मम ॥ वा. II. 104; the *आविर्ष* 5. 27. (cr. ed. 5. 21) has the same verse (but reads तुल्यपापेभ्यो माये ब्रूहि कवे वचः.).

587. अथ सप्तऋषयर्षास्तस्मिन् कोशशयनमग्निर्षो लोहपिण्डमजलिमाधाय तप्त सर्पाद्वा गच्छेत् । इह लिखितं in स्मृतिषु II. p. 112, ख. म. p. 196.

588. अथ जलविषयोरुल्लाङ्घनादवाप्तं तद्विधिमाधाय कोशविषयमग्निं । इह लिखितं II. p. 116.

paste, incense, lamp, flowers. A target is to be fixed at the distance of 150 *hasas* (cubits) from the toraṇa. A post of some sacred tree is to be fixed in the water and a strong man of one of the three higher castes free from love or hatred for the *śodhya* is to stand in navel-deep water facing the east and holding the post. Then the judge is to make the *śodhya* stand in water, invoke the deities from Dharma to Durgā, perform all the rites up to the placing of the writing (embodying the accusation) on the head of the *śodhya*. A *kṣatriya* or a *brāhmaṇa* following the profession of arms who is of a pure heart and has observed a fast should discharge, while standing near the root of the toraṇa, three arrows at the target. The *śodhya* should invoke the water with the mantra, ' O Varuṇa ! save me by means of truth ' (Yāj. II. 108)⁵⁸⁹. Then a young but swift man should run to the spot where the second arrow struck the ground, and stand there holding that arrow in his hand. Another swift man stands at the root of the toraṇa whence the arrows were discharged. Then the judge claps his hands thrice. At the third clap the *śodhya* dives into the water seizing the thighs of the man standing in water and at the same time the swift man near the arch runs at his best speed to the place where the second arrow fell. The other man who holds the arrow starts off the moment the first runner reaches him and comes running to the arch. If he does not see the *śodhya* or sees only his head (i. e. the back of the head) when he reaches the arch the *śodhya* is to be declared innocent ; but if he sees other parts of the head (such as the ear or nose &c.) or if the *śodhya* floats to some part other than the one where he dived he is not innocent.

Ordeal of poison. After worshipping Maheśvara with incense⁵⁹⁰ and the like (mentioned above) poison placed before the image of Maheśvara is to be administered in the presence of (images of)

589. Several smṛtis give different mantras to be recited by the judge in invoking the waters (so that there is an option). Vide Viṣṇu Dh. S. XII. 7-8 (tvamambbhāḥ &c.), Piṭāmaha (toya tvam prāṇinām prāṇāḥ &c.) quoted by the Mit. on Yāj. II. 108, Nār. IV. 316-317 (satyāṅṛtavibhāgasya &c.), Kālikāpurāṇa q. by V. P. p. 206. The mantra in Śaṅkha-Likhita (q. by Madanaratna and V. P. p. 206) was सद्सच्च त्वमेव पश्य । उभयोः प्रतिष्ठितस्त्वयि सस्ये सिद्धिं देव पश्य । त्वमेव तद्भूतिं वरेण्य तदादिशस्य । The M. of नन्दनरत्न reads तदादिशस्य ।

590. It is most appropriate that Śiva is to be worshipped in the poison ordeal, since, according to the Paurāṇic mythology, he swallowed the HĒLĒ-hala poison produced at the churning of the sea. 960 *yava*s make one *pala*.

gods and brāhmanas. The poison to be selected is *śūrṅga* (derived from the *śrṅga* plant) or *vatsanābha* (aconite) or *haimavata* (Viṣṇu Dh. S. XIII. 3, Nār. IV. 322 &c.). Pītāmaha (q. by Aparārka p. 712) treats the three as distinct, while Yāj. II. 111 appears to prescribe *śārṅga* growing on the Himālaya as the poison to be selected. Viṣṇu Dh. S. (XIII. 2-3) also does the same. In the rains the quantity of poison is to be six *yavas* in weight, in summer five, in hemanta (and *śiśira*) seven or eight and in *śarad* (autumn) less than the latter (i. e. six *yavas* acc. to Mit. and three acc. to V. Mayūkha). Poison is to be administered in the last watch of the night and never in the noon or afternoon or twilight; it was to be mixed with ghee thirty times as much. It may be administered to any one except a brāhmaṇa. Viṣṇu Dh. S. XIII. 6-7 and Nār. IV. 325 are mantras with which the judge invokes poison and Yāj. II. 110 is the mantra which the *śodhya* repeats before taking poison viz. 'O poison! thou art the son of Brahman, thou art firm in the duty of (deciding) the truth. Save me from this accusation and be like nectar to me by truth (if I be innocent)'. Nār. IV. 326 states that then the *śodhya* should eat the poison, should be kept in shade without food and guarded the rest of the day and if he discloses no signs of the effect of poison should be declared innocent. If the dose of poison is large, the Mit. (on Yāj. II. 111) says that when the *śodhya* shows no change till five hundred clappings of hands then he should be declared to be innocent and medical treatment should be resorted to. Pītāmaha says that, in order to prevent fraud, for three or five nights before the ordeal the intending *śodhya* should be kept under the supervision of the king's servants and an examination should be made whether medicines, incantations or precious stones that are antidotes are secretly employed.

The ordeal of koka. The *śodhya* is made to worship the stern deities (such as Rudra, Durgā, Āditya) with sandal wood paste, flowers etc. and made to bathe the images with water. Then the judge asks the *śodhya* to invoke the consecrated water with the mantra '*satyena mūlhirakṣi*' (Yāj. II. 108) and makes him drink three handfuls (*prastis*) of that water. Pītāmaha gives some special rules. The water may be that of the bath of the image of that god of which the *śodhya* is a devotee or if he holds all images in equal esteem, then of the Sun. In the case of Durgā it is her spike (*sūla*) that is to be bathed, the orb in the case of the Sun and the weapons in the case of other

gods. The water of the bath of Durgā is to be offered as ordeal to thieves and those who live by the profession of arms and the water of the bath of the Sun is not to be given to brāhmanas. In other divyas the result is declared immediately, but in the kosa ordeal there is a period of waiting which is more or less according to the value of the claim or the gravity of the offence. Acc. to Yaj. II. 113, Viṣṇu Dh. S. 14. 4-5, Nār. IV. 330, if within fourteen days of taking the kosa ordeal the śodhya does not suffer any serious calamity due to the king's action or the act of God or does not fall seriously ill or does not lose by death his son or wife or other dear relative or his wealth, then he is to be declared innocent. Insignificant loss or illness did not matter as it is unavoidable in this world. Besides, the calamity or illness must not be one common to several people (such as an epidemic). Drinking holy water (*koṭapāna*) was employed not only as an ordeal for proving innocence, but it was resorted to also for assuring another about one's good will and future honesty (vide Rājat. V. 326).

Ordeal of Tanṇula (rice grains). It is to be administered in charges of theft or disputes about debts or other monetary matters. On the preceding day grains of rice should be made white (i. e. husked). The judge should perform all the rites on the previous day. The rice grains should be placed in an earthen vessel, exposed to the sun, water of the bath of (the image of) the sun should be poured over them in the vessel and the vessel should be kept in that state the whole night. The next day in the morning the śodhya should swallow thrice the rice grains. He should be made to spit on a *pippala* or birch leaf. If blood is found mixed in his saliva he should be declared guilty.

Ordeal of taptamāṣa (heated piece of gold). In a vessel of copper, iron or clay sixteen angulas in diameter and four angulas deep, the judge should get twenty palas of ghee and oil poured and heat it to the boiling point. Then the judge should cast into it a golden piece weighing one māśaka (equal to five *guṇjās*). The śodhya should take out the heated golden piece with the thumb and the next two fingers. If he does not jerk his fingers or there is no scalded skin he should be declared to be innocent. There is another method. Cow's ghee should be poured in a vessel of gold, silver, copper, iron or clay and it should be heated to the boiling point so that when a green leaf is cast into it the sound '*churu*' is produced. Into the

boiling ghee he should cast a golden, silver, copper or iron seal ring once washed. Then he should invoke the ghee with this mantra 'O ghee! thou art the holiest thing in sacrifices, thou art nectar; burn him (the *sodhya*) if he is a sinner; be cool as ice if he be innocent.' Then the *sodhya* takes out the ring from the boiling ghee. If there are no marks of scalding on his forefinger he is innocent.

Ordeal by phāla (ploughshare). This is described by Bṛhaspati (S. B. E. vol. 33 p. 318 verse 28) quoted by the Sm. C. II. p. 119, V. P. p. 218 and others. A ploughshare of iron weighing twelve *palas*, eight angulas long and four broad should be made red-hot and the thief should be made to lick it once with his tongue. If he is not burnt he establishes his innocence; if otherwise, he is guilty. The Vyavahāratattva (p. 608) mentions that acc. to Maitihila writers the thief meant is a cattle-lifter. The ordeal mentioned in the Chāndogya Upanisad is a *phāla divya*.

Ordeal of dharma (i. e. of the images or pictures of Dharma). Men guilty of causing bodily injuries or who have monetary disputes or who desire to undergo this ordeal as an expiation for sins should undergo this. A silver image of Dharma and a leaden or iron one of Adharma should be prepared or the judge should draw on a birch leaf or a piece of cloth figures or pictures of Dharma and Adharma respectively white and dark in colour. Having sprinkled *pañcagavya* over the two, he should worship them with white and dark flowers respectively. The images or figures should then be placed in two balls of clay or cowdung. The two balls should be then placed inside a new earthen vessel in a cowdunged spot in the presence of images of gods and in the presence of brāhmanas. Then the judge should perform all the rites from the invocation of Dharma to the placing of the writing on the head. The *sodhya* should repeat the words 'if I am free from guilt may (the image or picture of) Dharma come to my hands'. Saying this he should take out one ball from the vessel. If he takes out Dharma he is innocent. This resembles the drawing of lots.

Ordeals played their part in the judicial systems of most ancient countries. In early England handling of red-hot iron and plunging the hand in boiling water were the commonest ordeals. In the ordeal of water sinking was a sign of innocence and floating of guilt. Stephens (History of Criminal Law of England, vol. 1. p. 73) suggests that the ordeal of water

was a form of honourable suicide. The Assize of Northampton (1176 A. D.) prescribed the ordeal of water for murder, robbery, theft, forgery and arson, but ordeals were abolished in England from 1215 A. D. (*ibid.* vol. I p. 300). In India⁵⁹¹ there is epigraphic and other evidence to show that ordeals were resorted to till the end of the 18th century and rarely even later. In the Kittur Pillar Inscription (J. B. B. R. A. S. vol. IX, pp. 307-309) dated in Kaliyuga era 4289 in the reign of Kadamba king Jayakesideva there is a description of the *phāladivya* which was administered by mutual agreement on Sunday to an ācārya Śīvasakti who had a dispute about a plot of land with Kalyāṇa-śakti the ācārya of another shrine and whose hand was examined the next day after he underwent the ordeal by all the bankers of the *agrahāra* village Degāva. In the Sillimpur stone slab Inscription of the time of Jayapaladeva (E. I. vol. XIII, p. 283 at p. 291-292) there is a reference to the ordeal of

591. In Beal's 'Buddhist Records of the Western world,' vol. 1, p. 84 (also Watters on Yuan Chwang's travels vol. 1, p. 172) four kinds of ordeals are mentioned as in vogue, viz. by water, fire, weight and poison. In the water ordeal the accused is placed in a sack connected with a stone vessel and thrown into deep water. If the man sinks and the stone floats he is guilty; if the man floats and the stone sinks then he is pronounced innocent. The ordeal by fire is: they heat a plate of iron and make the accused sit on it and again place his feet on it and apply it to the palms of his hands; moreover he is made to pass his tongue over it. If no scar results he is innocent; if there are scars his guilt is proved. In the ordeal by weight a man and a stone are placed evenly in a balance. If the accused is innocent the stone rises in the balance; if he is guilty the man rises and the stone falls. In the ordeal of poison an incision is made in the right thigh of a rat, all sorts of poison with a portion of the food of the accused are placed in the incised wound. If the man is guilty poison takes effect and the animal dies; if he is innocent the poison has no effect and the animal survives. It will be noticed that these descriptions of the four ordeals do not agree in several respects with the descriptions in the smṛtis and digests, while the poison ordeal in Beal has nothing in common with the smṛti poison ordeal. Alberuni (tr. by Sachau, vol. II, pp. 159-160) probably speaks of poison ordeal in the words 'the accused person is invited to drink *bish* called *brāhmaṇa*' (he is probably referring to poison being called the offspring of *Brahmā* in Yāj. II. 110 and Nār. IV. 325). In the ordeal of water the accused is simply thrown into a deep and rapidly flowing river or a deep well and he was held innocent if he was not drowned. He describes the *koṣa* ordeal and balance ordeal accurately, but states that if the man has spoken the truth he weighs more than before. He describes correctly *taptamāṣa* (gold piece taken from boiling clarified butter) and also the ordeal of the red-hot iron piece.

balance⁵⁹² (about 1200 A. D.). The Visnukundin king Mādhavarman in the 7th century A. D. (Journal of Andhra Historical Research Society, vol. VI pp. 17, 20, 24) is said to have carried out various ordeals (*avasita-vividha-digrah*). The E. C. vol. III (Māndya Taluka Ins. No. 79 p. 47) records that a dispute having arisen about the boundaries of land bestowed by means of a copperplate grant by the Hoysala king Virā-Narasimhadeva, one Kannaya, a descendant of the original donee, performed an ordeal by holding consecrated food in the presence of the God Hoysalesvara in the capital Dorasamudra and came out successful. E. C. IV. p. 27 (Yelandur Jagir Ins. No. 2 page 27, about 1580 A. D.) is a charter to potters whose headmen underwent the ordeal of dipping their hands in boiling ghee as against barbers and washermen who denied that potters could pare their toe nails and tie on upper cloth (at the time of marriage). In the Indian Antiquary for 1931 (vol. 60 p. 179) an extract is cited from the Archaeological Report for Travancore 1930 which describes the balance ordeal undergone by a brahmana 18 years before and seen by the writer himself in the temple of Śiva at Calicut. For the ordeal of red-hot ploughshare in the case of thefts, vide Report of South Indian Epigraphy for 1907, para. 27.

In the times of the Maratha kings ordeals were resorted to. For example, in 'Peshwa's Diaries' vol. 2 p. 150 (in 1764-65 A. D.) mention is made of *taplakafāha* ordeal (i.e. taking out a coin or ring or a piece of metal from a large vessel in which either water or oil or ghee had been brought to the boiling point) in which the person undergoing it had his right hand burnt up to the middle joints of the fingers and was declared to be false. In a Marathi publication called 'Vatāpatreṁ, nivādapatreṁ &c.' pp. 46-56 edited by P. V. Mayjee and D. B. Parasnis (1909) there is a document which describes in great detail the ordeal of fire undergone in connection with a dispute about the office and emoluments of Deshpande in the district of Kalyan in *śake* 1666 Pausa bright 11th, Thursday (1745 A. D.). It is stated therein that the ordeal was performed on the tank of the sacred river Godāvari at Kopargauṇ in accordance with Dharmasāstra in the presence of the Peshwa himself and learned brāhmanas and *paṇḍitas* near the temple of the god Śrī Śuklesvara, that as the opponent was long in

592. सन्दिग्धनिर्णयं दुरुपा कुर्वन्तोपि सवचनः । परस्व धर्मवृत्ता नान्दीद्वालम्बितः
बुधका * E. I. vol. XII. at pp. 291-292.

possession the ordeal had to be performed by the man claiming title, that an iron ball of 50 palas (i. e. 166 *tolas* and two *māṣas*) was heated red-hot and the *śodhya* carried it across seven circles and threw it in the 8th circle on flour and bundles which began to burn, that his hands were examined in the presence of the opponent and the respectable people and were found unaffected and the opponent was made to pass a document of victory to the *śodhya* called '*yajñapatra*'. The description agrees very closely with that given above. In the same work at pp. 36-41 there is a remarkable description about an ordeal undergone (in 1742 A. D.) by Mahomedan litigants in their own mosque for 15 days by lighting lamps and sitting down in the shrine. There are several other *śatpātras* in the same work which refer to ordeals.

For an informing article on *divyās* reference may be made to Dr. Dines Chandra Sirkar's 'The successors⁵⁹³ of the Śātavāhanas' Appendix pp. 354-376 (Calcutta, 1939). He quotes therein a passage from the 'Asiatic Researches' vol. 1, from which it appears that a magistrate named Ali Ibrahim Khan at Benares tried by *phāla divya* two cases in 1783 A. D. and reported them to the then Governor-General, Warren Hastings. In the 'Tṛtīya-sammelana-vṛtta' (pp. 18-26) and in the Caturtha-sammelana-vṛtta pp. 100-154 of the Bhārata-Itihāsa-saṃśodhaka-maṇḍala at Poona (both in Marathi) Mr. Bhaskar Vaman Bhat contributes two thoughtful and scholarly papers on the administration of Justice in the times of the Marathas in which the part played by ordeals is described at some length.

593. It is somewhat strange that Dr. Sirkar refers to 'Divyatattva of Bṛhaspati' (in 'Successors of the Śātavāhanas' Appendix p. 360). A Divyatattva of Raghunandana is well-known. A Divyatattva of Bṛhaspati has so far been mentioned nowhere.

CHAPTER XV

DECISION

The last (i. e. 4th) stage in a judicial proceeding is *sādhi* (Yaj. II. 8) or *nirṇaya* (decision). If *pratyākālita* (as defined above on p. 298) is regarded as a *pāda* of *vijārahāra* (and since all are agreed that there are only four *pādas*) then the decision is not a *pāda* of a lawsuit but is the fruit thereof (V. P. p. 86). When the evidence has been led, the king (or chief justice) should with the help of the *sahhyas* decide upon the success or failure of the plaintiff³⁹⁴. Nār. II. 42 says that the *sahhyas* should ask the parties to leave the court when they are considering their verdict or what decision was to be pronounced³⁹⁵. It is stated by Vyāsa and Śukra IV. 5. 271 that the decision of a case is based on eight sources³⁹⁶ (6 acc. to Śukra) viz. the three *pramāṇas* (possession, documents and witnesses), logical inference, the usages of the country, *śapathas* (oaths and ordeals), the king's edict and the admission of the litigants. Pītāmaka prescribes that, in disputes where there are no witnesses, no possession nor documents and no recourse can be had to divine proof, there the king is the final deciding factor as he is the lord of all³⁹⁷.

It is stated by Nārada II. 41 and 43 that, whether a party is defeated by his own admission or by his own conduct (i. e. because he adduces false witnesses or forged documents) or

394. 'उक्तनकाररूपेण स्वमतस्थापिता क्रिया । राज्ञा परित्यक्तस्यैव स्थाप्यो जय-
पराजयौ ॥ संसंहार ॥' by स्मृतिलिखः II. 120, परा. मा. III. p. 199.

395. Dr. Jolly (S. B. E. vol. 33 p. 35) is not right when he translates Nār. II. 42 as 'whenever the false assertions have been removed the judges shall pass a decree'. He has not also correctly rendered the com. of Asahāya. There is no word for 'assertions' in Nār. II. 42 'यथास्तुतस्यार्थं तु सत्ये कार्यो निनिश्चयः सदा' on which the comment of Asahāya is: यदा निर्णयकारो भवति तद्वस्तुवा वादिमतिवादिनोः पक्षैः सर्वैस्तत्क्षणसम्बन्धमानतैः सह ह्यवदुस्तार्थं सत्ये निर्णयः कार्यः ।

396. यमानैर्हेतुचरितैः शपथेन सुपात्रजया । वादिसंगतिपक्षवा निर्णयोऽष्टविधः स्मृतः ॥ व्यासः in प्यर. नि. p. 138, स्प. म. p. 86, शुकनीलि IV. 5. 271 (reads षट्विधः स्मृतः). शुक apparently regards यमान as one.

397. लेख्ये यत्र न विद्येत न मुक्तिर्न च साक्षिणः । न च विष्णोवत्तरोस्ति यमाने तत्र पाथिवः । निश्चयं ते न शक्याः स्तुर्वादाः सन्दिग्धरूपिणः । तेषां सुतः यमानो स्वपराव सर्वैस्व प्रमुखाः ॥ नितामह ॥ by स्मृतिलिखः II. 26, परा. मा. III. p. 93, पद्यद्वारसार p. 43, मद्भरतः.

whether he is defeated after full trial and the adducing of proof, it is proper that the defeat should be declared by the *sabhyas* (the judges) and that a *Jajapatra* (a document of success i.e. a judgment) should be given to the successful party couched in fitting terms. Several verses of Nārada (quoted by Aparārka p. 684), Brhaspati (S. B. E. vol. 33 p. 307 verse 19), Kāt. (259-265), Vṛddha-Vasistha (q. by Mit. on Yāj. II. 91 and Aparārka p. 684) and Vyāsa (Sm. C. II. p. 57) lay down the contents of the judgment⁵⁹⁸. It was to contain a brief statement of the plaint, the reply, the evidence, the depositions of witnesses, discussion thereof, arguments, the *smṛti* texts applicable, the opinion of the *sabhyas*, the decision and the relief granted, and should be signed by the chief justice and bear the royal seal. Vas. 19.10 refers to precedents also in the decision of cases and the awarding of punishments (*ūṣamūd-dṛṣṭāntā-cā*). The Mit. quotes a *smṛti* text (on Yāj. II. 91) that other members of the assembly (who are not judges) proficient in *smṛti* may also sign the judgment to show that the decision is acceptable to them also. But this was not absolutely necessary, as is made clear by the Vivādacandra p. 146. Kāt. (256) applies the word *paścātkāra*⁵⁹⁹ (refutation) to a judgment containing the above particulars given after a complete contest, while he restricts the word *jajapatra* to a document (given by the judge) when a plaintiff becomes what is called *hinaṁvīti* (because he makes a change in his pleading or for similar cause) and when there has been no complete trial of an action; and such a document embodies only what happened. Kāt. (III. 19) appears to employ the word 'paścātkāra' in a somewhat different sense when he says 'the

598. सकले पूर्णवादी च सोचरे सकिर्ष तथा । साधधारणकं चैव तद्वैषं जपपत्रकम् ॥ भारद् (q. by अपरार्क p. 684); वयोपन्यस्तसाधधारणसंज्ञकं सोचरकिर्षम् । साधधारणकं चैव जपपत्रकमिदमेत ॥ यादृषिषाकादिहस्ताङ्गं सुदितं राजसूत्रम् । सिद्धेऽर्थे वादिने वृत्तान्तरिने जपपत्रकम् ॥ वृद्धवसिष्ठ q. by मिता on वा. II. 91 and अपरार्क p. 684; पूर्णोत्तर-किर्षावादी वमार्ण तपरीक्षणम् । निमर्दं स्मृतिवार्यं च यथासम्यं विनिश्चितम् । एवमर्धे समो-सिन जपपत्रेऽभिलेखयेत् ॥ व्यास q. by स्मृतिच. II. 57; पूर्णोत्तरकिर्षासुक्तं निर्णयार्थं यदा वृत्तः । यद्यप्यावाधिने लेखये जपपत्रं तदुच्यते ॥ वृद्ध q. by स्व. ना. p. 309; सभासद्वृत्त ये तत्र स्मृतिशास्त्रविदः स्थिताः । यथा लेखयिषी तद्वत् स्वदन्तं तत्र द्वापयेत् ॥ कात्या. (263) q. by स्मृतिच. II. p. 57, मिता. on वा. II. 91 (without name). 'जपपत्रे सम्म-यादृषिषाकभूतानिर्णयमतिरेष प्रबोजिका न तु पात्रव्याप्तितत्त्वस्तोपि' विवादचन्द्र p. 146. Compare Order 20 r. 4 of the Indian Civil Procedure code for the contents of the judgment.

599. निरन्तास्तु क्तिरा यद्य वमापेनैव पादिना । यन्वाक्यारे भवेत्तत्र न सर्वान्ति विधी-यते ॥ अन्यथाद्यादिहीनेष दुर्वरणां वदीयते । इत्याध्यावादीसिद्धं तत्र राजजपपत्रकम् ॥ कात्या. q. by स्मृतिच. II. 57-58, परा ना. III. 124-125, स्व. म. p. 146. For *हीनवादी* vide above p. 303.

person, who, when charged with murder, does not reply to the charge that very day, stands refuted' (i. e. is found guilty)⁶⁰⁰. The Mit. (on Yaj. II. 91) differing from Kat. holds a jayapatra to be a judgment giving a summary of the plaint, the reply, the evidence and the decision, while when a plaintiff is defeated for change of pleading or for default of appearance or for non-prosecution the document stating this is called '*hīnapatruka*'. It is to be regretted that ancient jayapatras in Sanskrit have not yet been discovered. In 25 Calcutta Weekly Notes pp. CXLII—III Dr. Jolly communicated the substance of a jayapatra, couched in ancient Javanese, engraved on a copper-plate found in the island of Java and described by Dr. Brandes in a Dutch paper. That judgment is dated *śaka* 849 (928 A. D.), relates to a dispute about a debt of one *śuvarṇa* in which the plaintiff failed because he did not appear at the trial. At the end there are the signatures of four witnesses and the document is styled jayapatra at the end. Vide for the same jayapatra J. B. O. R. S. vol. VII pp. 117 ff. The late Mr. K. P. Jayaswal published in 24 Calcutta Weekly Notes (pp. CXLIX—CLVI) a jayapatra (text, translation and remarks) granted by the Hindu court of Mithila in *śaka* 1716 (1794 A. D.) and in J. B. O. R. S. vol. VI pp. 246-258, which strictly conforms to the rules of procedure laid down in the *smṛtis* and *nibandhas* and is couched in dignified, technical and scrupulously formal language. It related to the ownership of a slave girl. Plaintiff at first made default in appearance; the judgment notes this and also refers to the restoration of the suit. The defendant raised an objection that a single witness to prove a matter was inadmissible. This objection was upheld. Then plaintiff prayed that he might be allowed to undergo an ordeal, but this request was disallowed as human proof was possible and plaintiff ultimately lost his suit. The judgment is written and signed by one Sacala-mīra, who was the chief justice, and is addressed to other members of the *sabha*, called *dharmaadhyaksas* and *panditas*, seven of whom express their concurrence (*sammata*) at the top of the document. Vide Journal of the Bihar and Orissa Research Society vol. XXVIII for 1942 for nine Sanskrit jayapatras from the courts of Mithila in the 18th and 19th centuries.

The Mit. (on Yaj. II. 91), and V. Mātrkā p. 309 note that a jayapatra is given specially to prevent the same matter being

agitated again, while a document given where a party is *hinavādi* (i. e. a *hinapatra*) serves the purpose of making that party liable later on to pay a fine. When a dispute was decided by a domestic tribunal (*kula* &c.) there was no *jayapatra* but only a *nirṇaya-patra* (*kulādibhir nirṇaye jayapatrābhāvāt-nirṇaya-patram tatra kāryam paratapatramiti yūvat*, as the Vy. Nirṇaya p. 85 says). It would be better to adopt the reading '*rtitapatram*' as given by one Ms.

The defeated party has to pay a fine to the king and the successful party was complimented (or honoured) by the king (or chief justice) and was to be put in possession of the matter that he succeeded in proving⁶⁰¹. Manu VIII. 51 prescribes that in monetary matters (i. e. in civil disputes) the defeated party should be made by the king to pay the judgment debt to the successful party and also some fine to the king according to his ability, while Manu VIII. 139 lays down that when the defendant admits in the court his liability he has to pay to the king five per cent as fine and if the defendant denied his liability altogether and was proved to be false he had to pay as fine double of that (i. e. ten per cent). This is analogous to court fee, for which see above pp. 294-295. If one or both parties had laid down a stake or wager (viz. 'if I be defeated in this suit I shall pay a hundred panas') then he had to pay that stake to the king and a fine as above and the subject of dispute to the successful party (Yāj. II. 18 and Nār. II. 5)⁶⁰²; compare Visnu Dh. S. V. 153-159 for similar rules. The punishments awarded in criminal matters will be discussed immediately below.

It would be necessary to see in what cases review of judgment was allowed. The general rule is stated by Manu IX. 233, 'whenever any legal proceeding has been completed (*tīrita*) or has been carried out so far as to recover a fine from the defeated party, a wise king shall not annul it' (at his mere will or pleasure or through greed). The words '*tīrita*' and

601. सिद्धेनार्थेन संबोधये वादी सत्कारपूर्वकम् । लेख्यं स्वहस्तसंयुक्तं तस्मै दद्यात् प्राधिकः ॥ कात्या. q. by स्मृतिच. II. p. 57, अपराके p. 684, स. वि. p. 220. The मदनमोहन (स्वय. ms.) explains 'सिद्धेनार्थेन साधितत्वेन । लेख्यं जपपत्रम् । साधितं धर्मं तदभिप्रायसहितं दापनीयम् ।'

602. विवादो सोत्तरपक्षे द्वयोर्वैतक्य द्वीपते । स एव हि धर्मं दाप्यो विनश्यच्च पराजये ॥ भारद्. II. 5.

'*anusista*' have been variously explained⁶⁰³. The word '*trita*' is very ancient and occurs in the Delhi Pillar Edict IV of Asoka (E. I. Vol. II p. 253) as '*tilita-dandānam*' qualifying men imprisoned in jails. Medhātithi and Kullūka explain them as 'decided according to the rules of the *śāstra*' and 'taken so far as to recover fine from the unsuccessful party' respectively. Kāt. (495) defines them differently: "When a certain side is decided by the *sabhyas* themselves (without the examination of witnesses) to be either true or false, it is said to be *trita* and that matter or side is called '*anusista*' which is declared (to be true or false) on the testimony of witnesses." The lexicon called *Valjayanī* seems to have Kāt. in mind and defines '*trita*' as a perverse decision given by the *sabhyas* themselves and '*anusista*' occurs where the evidence of witnesses makes what is true appear as false (*Bhūmikāṇḍa*, *valśyādhyāya*, verses 11-12). Nār. II. 65 (S. B. E. vol 33 p. 22) employs the two words, which the Mīt. on Yāj. II. 306 respectively explains as (*trita*) 'decided by reliance on documents and witnesses but not carried so far as to recover a fine', and ('*anusista*') as 'decided so far as to recover a fine from the defeated party'. Vide *Aparārka* p. 866 and V. P. p. 90 for explanations.

According to Kāt. quoted in the *Vyavahārasāra* (p. 101)⁶⁰⁴ the decree should provide for the successful party receiving the interest on or accretions to the movable or immovable property placed (during the pendency of the suit) in the hands of a third party (as a sort of Receiver). Kāt. (477-480) points⁶⁰⁵ out the various ways in which a decree may be executed. The king should make a *brāhmaṇa* debtor return the decretal debt

603. *हीरितं समापितं निर्णीतवर्णनं प्रापितामिति यावत् । ... अगुणितं अधिमन्वाद्येनो यति कथितं जपयते चारोपितम् ।* स्प. प्र. p. 90; *हीरितं समाप्तं अगुणितं साक्षिभिश्चकम् ।* वीपकालिका ७७ वा. II. 306; *हीरितं समापितं निर्णीतमिति यावत् ।* अगुणितं साक्षिभिश्चकम् । मदनरत्न (=व. ७७). *सदेवामरुतं सम्प्रेस्तीरितं साक्षिणा इ चेत् ।* अगुणितमयो लेखो लेख्यं दिव्यं तु दैविकम् ॥ वैजयन्तीकोश.

604. *मध्यस्थस्थापितं रूपं चले वा यदि वा स्थिरम् । पश्चात्तत्सोदयं द्वाप्यं जपिने यजमुत्तरम् ॥* कात्या. in *व्यवहारसार* p. 101. This is ascribed to *नारद* in *स्मृतिच.* II, p. 120, and *मदनरत्न* which reads *मध्ये पक्षधापितं* and *जपिने जपयकम्* and explains '*मध्ये पक्षधापितं* विवादकाले मध्यस्थस्थापितम्'.

605. *राजा तु स्वामिने विने सः सन्नेनैव प्रदायते । देशाचारण आम्नांसु दुष्टान् संपातिन द्वापयेत् ॥ रिशियनं सुहृदं वापि उलेनैव प्रदायते ।* बणिजः कर्षकाश्चापि शिल्लियनश्चावपीड्युः ॥ धनदानामते दुष्टेषु स्वाधीनं कामं कारयेत् । अज्ञातौ वधनागारं ज्येष्ठरो नाष्टपादुते । कर्षकाश्च शत्रुविद्वेषाभ्यं समीधानांस्तु द्वापयेत् । कात्या. १. by *मिता* on वा II. 40 and 26, *अपराक* p. 645, *स्मृतिच.* II, pp. 121, 124, परा. म. III. 200 and 209.

to the judgment creditor by conciliatory words, should make other debtors return it according to the usage of the country and compel bad people to satisfy the decree by means of physical pain (i. e. imprisonment). The king should make a co-sharer or friend (of the successful party) pay the decretal debt by means of a ruse (i. e. by borrowing an ornament or the like from him on a festive occasion and handing it over to the creditor) and also make traders, husbandmen and artisans (to pay) in a similar way. On finding that the debtor is unable to return the debt in cash, the king should make the debtor, whether a *ksatriya*, *vaiśya*, *sūdra* or husbandman, work (for the creditor). If he be unable to work the debtor should be sent to jail except when he is a *brāhmaṇa*. Mann also (IX. 229) says that if the members of the three *varṇas* other than *brāhmaṇa* are unable to pay the fine imposed by the king they should be made to work for the king, but a *brāhmaṇa* may be allowed to pay in easy and small instalments. If a *brāhmaṇa* debtor was unable to pay, nothing could be done for recovery of the decretal debt except taking a surety from him if any one cared to be one. In modern times also judgment debtors are liable to be arrested and detained in civil jail in execution of decrees under rules 55-58 of the Indian Civil Procedure code (except women in execution of a decree for the payment of money). If in ancient times state policy exempted *brāhmaṇas* from arrest and detention in a civil jail for monetary debts on spiritual grounds and on the ground of caste, in modern times the State in India exempts agriculturists from arrest or imprisonment in execution of a decree for money on economic grounds under certain legislative enactments like sec. 21 of the Deccan Agriculturists' Relief Act (Bombay Act XVII of 1879). As regards women also Kāt. (488-489) laid down certain prudent rules: "Women who are not ⁶⁰⁶ independent should not be arrested (for offences like adultery); it is the male who should be regarded as the offender; women should be punished by their lord (i. e. the person on whom they depend) but the king should take away for punishment the male offender. Even if a woman whose husband has gone abroad be consigned to jail she should be kept imprisoned only till he returns." The Sm. C. II. p. 323 explains that the first verse applies to a woman who can perform the

606. नारायणः स्त्रियो दण्डाः दुर्मांसवापरादयः । यमुना शास्त्रकोषाला राजा ह
दुर्बले भवेत् ॥ दण्डितस्त्रियिका नारी यापिता यदपि हरे । तावता वन्दते स्वाध्या वाप-
दस्यात्मनः यमुः ॥ कात्या. q. by स्मृतिसं. II. p. 323.

expiation for adultery and who is dependent and the adultery is not with a male of a lower caste.

Nār. (II. 40) lays down⁶⁰⁷ a qualification that when a party has been defeated by his own conduct (i. e. by his demeanour or by his having adduced manifestly false witnesses or forged documents) there is to be no retrial or review of judgment, but where a man has lost his cause through (the dishonesty of) witnesses or the *sabhyas*, the cause may be tried anew. There are four exceptions to the finality of the judgments of the king's court. Where a litigant either through folly or insolence⁶⁰⁸ thinks a decision to be wrong, he may be allowed a retrial, provided he agrees to pay double the fine inflicted on the losing party (Yaj. II. 306, Nār. I. 65, Kāt. 496). Secondly, where the former judgment is obtained by fraud or force, it may be set aside (Yaj. II. 31)⁶⁰⁹. Thirdly, where the litigant was incompetent, i. e. was a woman or a minor or a lunatic or intoxicated, seriously ill or distressed by a calamity or where the proceeding was carried on by another on behalf of a litigant who did not appoint him or with whom he was not connected in any way or was held inside a house or outside a town or village (i. e. in a forest) or by an enemy, the decision may be set aside and a retrial ordered (Nār. I. 43 in S. B. E. vol. 33 p. 16, Yaj. II. 31-32). Fourthly, a king could set right a former decision of his predecessor which was unjust and arrived at through ignorance (Mit. on Yaj. II. 306)⁶¹⁰.

Yaj. (II. 4 and 305) prescribes that legal proceedings that are suspected to have been wrongly decided by the *sabhyas* through partiality or greed or intimidation should again be tried by the king and if the suspicion turns out to be true he should levy from the *sabhyas* and the party who at first succeeded double the fine that is imposed on a defeated party. Nār. I. 66 (in S. B. E. vol. 33 p. 22) is similar. Manu IX. 231 (= Mateya 227, 158)

607. साक्षिसम्बाधनजनानां हृषणे वर्जने नूनः । स्वव्यापसिजानां तु नास्ति पौनर्महो विधिः ॥ नारद II. 40.

608. त्रीरिते चासुक्षिते वा को मन्देत विधर्मतः । द्विपुने दण्डमास्वाप सज्जापे नून-
पञ्चरेव ॥ नारद I. 63 : कुलादिभिर्निश्चिते सन्तोर्ध्वे न मन्त्रतु यः । विचार्य सज्जते राजा
कुक्षते पुनश्चक्षरेव ॥ बृह^१ and नारद^२ q. by v. p. p. 21.

609. पटोपदिभिर्निर्मुखाण्यप्यहाराक्षिर्नयेत् । वाङ्. II. 31.

610. न्यायापेक्षे पदमन्त्रेन राजाज्ञामकुर्वन् भवेत् । तद्वदभ्यापयद्विहितं पुनश्चपि विधि-
ज्ञयेत् ॥ स्मृति q. by मित्रा, on वा. II. 306, दत्त. भा. III. p. 382. This is नारद,
मकीर्णक 2.

and 334 prescribe that when officers appointed to administer justice cause loss to litigants by taking bribes, the king should deprive them of all their wealth and when the *amātyas* (ministers) or chief justice disposes of a matter wrongly (but without being bribed), the king should himself decide the matter correctly and should impose on the *amātyas* or chief justice a fine of 1000 *pasas*.

Though there is hardly any express *smṛiti* text for the transfer of cases from one court or judge to another court or judge, in practice this must have been done, though rarely. In "Selections from Peshwa's Daftar" vol. 43 p. 108 there is a letter (of 12-8-1764 A. D.) written by the renowned minister Nana Phadnis to the Peshwa Madhavrao in which the former endeavours to persuade the latter to cancel his order for transfer of a case from the court of Rāmsāstri, famed for his impartiality and strict life, to another judge on the ground that one of the litigants was afraid that Rāmsāstri showed some partiality to the other litigant. Manu (VIII. 174-175) states that the king who decides the causes of people unjustly through greed is soon subjugated by his enemies, while the king who curbing his own temper and desires impartially decides causes according to the dictates of *sāstra* becomes of one mind with his subjects as rivers merge in the ocean. Br. and Nār. I. 74 (S. B. E. vol. 33 p. 24) lay emphasis on both the secular and spiritual effects of doing even justice, saying that when the king gives decisions according to *sāstra* he spreads his fame in this world and secures Heaven⁶¹¹.

A crime may be defined as an act or omission that breaks the law and is subject to public punishment. But all kinds of breaches of the law do not result in punishment; only some do. Those breaches are crimes which are deemed to be menaces to the conditions of existence of society, which society, the ruler or legislation recognises as preventible only through punishment. The menace is not that of the specific action, but the abstract menace inherent in that type of action. A breach that is held to be a crime at one time may even be held not to be a crime at another time or in another country. For example, adultery is a crime under the Indian Penal Code (sec. 497), while it is not a crime but a civil wrong in English Law.

611. एवं कालोद्धितं राजा कुर्वन्निर्णयपालयम् । विस्मयेह पश्यो लोकं महेन्द्रसचिवो भवेत् । साक्षिदेववातुमानेन ननुर्वन्कारनिर्णयम् । विस्मयेह पश्यो राजा नृपस्यप्रोक्तिं विद्व-
पम् ॥ बृह० प. ५. ५५. स्मृतिच० II p. 123. पृ. ३. III. p. 219.

Many crimes and wrongs were sins and entailed secular punishments and also religious sanctions (viz expiations, *prāyścittas*). Vide Manu IX. 236, 240, Br. (S. B. E. vol. 33, p. 362, verse 22) and Pāṭhīnāsī quoted below⁶¹². Maine in his 'Ancient Law' chap. X (3rd ed. of 1866) examines ancient western systems like those of Greece and Rome and makes the generalisation (p. 370) that the 'penal law of ancient communities is not the law of crimes; it is the law of wrongs or, to use the English technical word, of Torts. The person injured proceeds against the wrong-doer by an ordinary civil action and recovers compensation in the shape of money damages if he succeeds'. Dr. Priya Nath Sen in his Tagore Law Lectures on 'Hindu Jurisprudence' (1918, Lecture XII) rightly points out that this generalisation is not applicable to Ancient Hindu Law. It has already been shown (on pp. 264-266) that the king could of his own motion take cognisance of many wrongs called *chālas*, *padas* and *aparādhas* and it is clear that in such crimes as theft, assault, adultery, rape, and manslaughter the smṛti texts do not prescribe only a money compensation to the person wronged, but corporal punishment in the first instance and monetary compensation in addition. Vide for example, Manu VIII. 287, Yāj. II. 222, Br. (SBE vol. 33 p. 358 verses 9-10), Kat. (787) which prescribe a punishment for causing pain to the body or the loss of a limb and also the expenses of curing the person injured and some *śatium* to him.⁶¹³ Ap. Dh. S. (I. 9. 24. 1 and 4) lays down that the slayer of a ksatriya should give a thousand cows in order to remove the enmity (i. e. as compensation to relatives) and one bull in addition for expiation.⁶¹⁴ The Chāndogya Upaniṣad quoted above (p. 362) shows that a thief was punished with death in those early days. There is a passage in the Tai. S. II.

612. अकार्यकारिणामेषां यावद्विषे तु कल्पयेत् । यथाप्रकल्पसुखं च दण्डं चैषां प्रकल्पयेत् ॥ पैठीनसि q. by दुण्डविवेक p. 76.

613. वेदेन्द्रिद्वयविनाशे तु यथा दण्डं प्रकल्पयेत् । तथा मुष्टिकरं द्वेषं समुत्थानं च प्रलिक्षते ॥ समुत्थानपर्यं चासौ दद्यादाज्जनिरोपनात् । कारणा. q. by स्मृतिक. II. p. 329, अथर्वकं p. 316, यथा मा. III. pp. 419-420; दुण्डसमिदनायैव दुण्डपादप्रकल्पिकः । इति तद्विद्वन् वाग्यद्राजदुण्डसतोऽपिक्तः ॥ बृह. q. by विश्वस्य on या. II. 226.

614. अग्निदेहत्वा यवां सहस्रं वैरपातनायै दद्यात् । ... कपनश्चाप्यपिक्तः सर्वत्र यावद्विषयः । आप. ध. सू. 1. 9. 24. 1 and 4; हरदत्त in order to bring Ap. in line with Manu XI. 127 and Yāj. III. 266 explains that 1000 cows and one bull are all for expiation.

6. 10. 1 (quoted in H. of Dh. vol. II p. 151 n. 346) which states, 'He who threatens a brāhmaṇa should be made to pay a hundred, he who strikes a brāhmaṇa should be made to pay a thousand'. It is rather doubtful whether the figures stated are fines or are meant as *solutum* to the wronged. In Rg. II. 32. 4 (which also occurs in Tai. S. III. 3. 11. 5) the poet prays to Rākā⁶¹⁵ (the Full Moon personified) that she may be pleased to grant the boon of a valiant son, who would be 'śatadāya'. Śayana's rendering of this word as 'possessed of plentiful heritage or wealth' appears to be the right one. The words 'śatadāyam viram' in the Tai. S. III. 3. 11. 5 are translated by Prof. Keith as 'a hero whose *vergild* is a hundred'. This is incorrect, confounding as it does the ideas of western Germanic tribes with the Rgveda composed several millenniums earlier. It would be a strange thing to pray to a goddess for a son and at the same time to have in mind or refer to the price set upon him if he happened to be killed.

The ancient smṛti writers were quite aware of the several purposes served by punishments for crimes,⁶¹⁶ though they do not develop a regular science of penology. The person wronged feels a great urge for revenge or retaliation and other men sympathise with that emotion. The individual, however, could not, in civilized societies, take the law into his own hands and therefore the State saw to it that the emotion for retaliation or revenge was to some degree satisfied by the adequate punishment of the wrongdoer. Yāj. II. 16 and Nār. I. 46 (SBE vol. 33 p. 17) state that when a person without complaining to the king sets about to secure what is denied by the opposite side or is doubtful he becomes liable to punishment and he also cannot secure the object he wants.^{616a} In all ancient societies the *lex talionis* (the law of retaliation, viz. an eye for an eye,

615. राजानमै सुभक्तं सुदुती हुवे ... ददातु वीरं शतदायसुखम् ॥ ऋ. II. 32. 4.

616. The work of Harry Elmer Barnes on 'The Study of punishment' (1930, New York) may be read with great interest and profit. It will set off to great advantage the comparatively humane treatment of criminals in Ancient India as compared with the horrible and revolting methods for punishing criminals employed in the West.

616a. अनायेद्यं तु यो राज्ञे सन्निधयेऽर्थं यत्नते । प्रसन्नं स विनेयः स्वार्थं चास्वार्थं च लिखति ॥ नारद I. 46.

a tooth for a tooth) prevailed.⁶¹⁷ *Manu* VIII. 280 (which is almost the same as *Nār.*, *pārusya*, verse 25), *Yaj.* II. 215, *Viṣṇu Dh.* S. V. 19 and *Śāṅkha-Likṣita* prescribe that with whatever limb⁶¹⁸ a man of low caste offends against a *brāhmaṇa*, that very limb of his shall be cut off. Another and the most important purpose of punishment is deterrent. Punishment of the evil-doer serves as an example and a warning to all others that might be tempted to tread the paths of violence and crime. This aspect of punishment (*danda*) has already been dwelt upon in the section on *rājadharmā* (p. 21). The end sought to be served by punishment was the protection of society and the securing of its happiness. The *Śāntiparva* (15.5-6) remarks that people do not commit sins through fear of punishment at the hands of the king, through fear of *Yama* and of the next world and through fear of others (i. e. public opinion).⁶¹⁹ *Gaut.* XI. 28 derives the word *danda* from the root *dam* to restrain or to deter. This purpose of punishment is well brought out in the *Mṛcchakatika* (X) when the sentence passed on *Cārudatta* for the alleged murder of *Vasantaśeṇa* is proclaimed to the citizens by the executioners.⁶²⁰ Another purpose of punishment is preventive i. e. if a culprit is imprisoned for an offence he is prevented or disabled from repeating the same offence or

617. Vide *Deut.* XIX. 21, *Lev.* XXIV. 20 for the ancient Hebrew Code (eye for eye &c.), the code of *Hammurabi* (about 2200 B. C.) in *Babylon* and the law of the Twelve Tables in *Rome*. In the 8th Table in *Ortolan's 'History of Roman Law'* (tr. by *Pritchard* and *Nasmyth*, 1871) p. 114 the 2nd provision is: 'retaliation against him who breaks the limb of another and does not offer compensation'. In *Hammurabi's Code* (text tr. by *C. H. W. Johns*, 1903) sections 196 and 200 are: 'If a man has caused the loss of a gentleman's eye, his eye one shall cause to be lost. If a man has made the tooth of a man that is his equal to fall, one shall make his tooth to fall out'.

618. येन येनाङ्गनापरार्थं कुर्वात्तत्तद्वश्य कृतेत्ययमवश्य आङ्गनात् । शङ्खितिवित् ए. in *अ. न.* p. 249; येनाङ्गनापरार्थं आङ्गनापरार्थमाङ्गनात् । तद्वत् तस्य कृतेत्ययमेवं शङ्खितिवित् । नारद (पादप. 25); इतिवर्णोऽधिकवर्णस्य येनाङ्गनापरार्थं कुर्वात्तत्तद्वश्य आङ्गनात् । *विष्णुधर्मसूत्र* V. 19.

619. राजदण्डमपादेके पापाः पापं न कुर्वते । दण्डदण्डमपादेके परलोकमपादयि । परस्परमपादेके पापाः पापं न कुर्वते । ... दण्डस्यैव अपादेके मनुष्या वर्तमाने स्थिताः । शान्ति 15. 5-6. Vide *मत्स्य* for almost the same words (225. 16-17).

620. शृणुत आर्याः शृणुत । एष ... आर्यन्वादृष्टो नाम । एतेन ... वसन्तसेना मारिता । ... तदा राजा पादकेन वधमाज्जतः एवं मारयितुम् । एषपर ईदृशमनुमपलोकविक्रमकार्यं करोति तमपि राजा पादक एवमेव शान्ति । *सुच्छकटिक* X after verse 11.

committing further offences for some time at least and if he be sentenced to death or transported for life or banished, the commission of offences by him is prevented for his life-time. Another purpose was that of reform or redemption of the evildoer. The punishment was deemed to be a sort of expiation, which purged the man of sinful promptings and reformed his character. Manu VIII 318 (= Vas. 19. 45) states that men who are guilty of crimes and have been punished by the king go to heaven, becoming pure like those who perform meritorious deeds. Medhātithi remarks on this verse that this applies only where the punishment is corporal and not merely monetary. It will be seen from the early sūtras like that of Gautama and from the Manusmṛiti that the more ancient criminal law in India was very severe and drastic, but that from the times of Yājñavalkya, Nār. and Br. the rigour of punishments was lessened and softened and fines came to be the ordinary punishments for many crimes, as is noted by Fa Hien (399-400 A.D.) in relation to middle India (*Madhyadeśa*) under the Guptas apparently: 'The king governs without decapitation or other corporal punishments. Criminals are simply fined, lightly or heavily according to the circumstances. Even in circumstances of repeated attempts at wicked rebellion they only have their right hands cut off' (Legge, 1886 p. 43). This may be contrasted with the state of things depicted by Megasthenes 700 years earlier than Fa Hien: (Fragment XXVII p. 71) 'a person bearing false witness suffers mutilation of his extremities. He who maims anyone not only suffers loss of the same limb but his hand also is cut off. If he causes an artisan to lose his hand and eye he is put to death'. The *Dasakumāracarita* (II p. 56) states that the Mauryas conferred a boon on traders that for certain offences they were not to be sentenced to death, but were to be deprived of all their wealth and banished. The first separate Rock Edict of Aśoka at Dhauli (*Corpus I L* pp. 93, 97) shows that great Emperor's anxiety that his judicial officers should strive to see that there is no undeserved fettering or no undeserved harsh treatment. In India the list of capital offences at any time was much shorter than in the West. Stephens is constrained to admit that in England 'there can be no doubt that the legislation of the 18th century in criminal matters was severe to the highest degree and destitute of any sort of principle or system' (*Hist. of Cr. Law*, vol. I p. 471). As stated by Dr. Hart (in 'Way to justice' p. 94), at the beginning of the 19th century in England more than a hundred offences were

punishable by death. In 1832 a child was convicted at Ludgate Hill for stealing a box of paints worth two pence, was tried at the Old Bailey and hanged (vide 'In the service of youth', by Dr. J. M. Brew, 1943 chap. XV. p. 208).

Manu VIII. 129, Yaj. I. 367 and Br. (S. B. E. 33 p. 387 verse 5), Vṛddha-Hārta (7.195) speak of four methods of punishment (*daṇḍa*) viz. by gentle admonition, by severe reproof, by fine and by corporal punishment and declare that these punishments may be inflicted separately or together according to the nature of the offence.⁶²¹ The first takes the form of saying 'you have not done a proper thing', the 2nd 'lie upon you who are a wrongdoer and guilty of *adharma*'. Br. lays down that preceptors, *purohitas* and sons should be sentenced to the punishment of wordy admonition, other persons who engage in disputes should be punished with reproof or fines and those guilty of *mahāpātakas* should be punished with corporal punishment. That admonition and reproof were two modes of punishment shows that ancient writers were alive to the notion that among very sensitive persons or in a very sensitive society verbal condemnation would be enough to achieve the main purposes of punishment. Br. (SBE vol. 33. p. 388 verse 8) states that the first two are within the privilege of the *brāhmaṇa* (appointed as chief justice) but fines and corporal punishment are to be inflicted by the king (on the recommendation of the chief justice, *prāḍivākamate sthitaḥ*). The *Mṛcchakaṭika* (IX) bears this out when the judge says 'We have authority only to pronounce the judgment; as to the rest the king is the final authority' (*niṣṇaye vajanāṁ pramāṇam śeṣe tu rājā*). Gaut. XII. 51, Vas. 19. 9, Manu VII. 16, VIII. 126 and Yaj. I. 368 (= Vṛddha-Hārta VII. 195-196), Bṛhat Parāśara p. 284, Kaut. IV. 10 lay down that the award of punishment must be regulated by a consideration of the motive and nature of the offence, the time and place, the strength, age, conduct (or duties), learning and monetary position of the offender and by the

621. The *Dandaiveka* of Vardhamāna (published in Gaikwad Oriental series, 1931) deals exhaustively with the subject of punishments. न स्वयेदं सप्तदण्डं कृतमिति निश्चयः, अिह स्वो दापीदोसमपमंकारिणमिति निर्मेतस्वम् । दण्डविषेक p. 20; these are respectively नानुवृत्त and अिहदण्डः. दण्डपुटेदितानुवृत्तान्दण्डान्दण्डेनैव दण्डयेत् । विवादिनो नानाव्यापान्निदुष्यन्त्या न च दण्डयेत् । महापातकानुवृत्तान् च दण्डयेत् । इह. q. by इहतिथि. II. p. 126 and इह. नि. p. 328.

fact whether the offence⁶²² is repeated. This provision means that the dharmaśāstras did not hold that the same punishment must be meted out for the same offence irrespective of the antecedents, characteristics or physical and mental condition of the offender. They always took extenuating circumstances into account. Kaut. (I. 4), differing from the view of the ācāryas that there is nothing like *danda* for bringing under one's complete control all beings, gives his own opinion that, as a king whose control and punishments are most severe makes the subjects disgusted with him and as the king who deals mild punishments is disregarded by the people, the king should distribute punishments according to the deserts of the offenders and would then command respect.⁶²³ One reason why some of the works on dharmaśāstra prescribe mild punishments is the doctrine of *karmavipāka* (a man committing certain sins is born in the next life afflicted with certain diseases or bodily deficiencies or is born as a low or filthy beast or bird). Vide Manu XI. 49-52, Yāj. III. 207-216, Viṣṇu Dh. 8. 44-45. This doctrine will be dealt with later on under *pātaka* and *prāyaścitta*. Gaut. XII. 48 first provides that the king must take into account, when awarding punishment to the criminal, his physical or monetary circumstances, the nature of the crime, the fact of repetition of the crime and then adds that the king should award punishment after consulting an assembly of learned brāhmaṇas. The *Dandaviveka* (p. 36) quotes a verse in which the considerations that should weigh in awarding punishment are brought together viz. the offender's caste (as in Manu VIII. 337-338 for theft), the value of the thing, the extent or measure (as in Manu VIII. 329), use or usefulness of the thing with regard to which an offence is committed (as in Manu VIII. 285), the person against whom an offence is committed (such as an idol or temple or king or brāhmaṇa), age, ability (to pay).

622. दुरुषं चापराधं च कारणे सुकृताययद् । अनुबन्धं तद्वत्त्वं च देशकालौ समीक्ष्य च । उक्तमाचारादप्यर्थं मेधादा दण्डकर्मणि । राज्ञश्च प्रकृतीनां च कल्पयेदन्तरात्मिकाः । की. IV. 10; दण्डस्तु देशकालधर्मवर्षाधिसाध्यानविशेषैर्हि साकोशयोः कल्पयेत् । समिह 19. 9; दुरुषश्च अपराधाद्यनुबन्धविज्ञानाद्दण्डनिर्णयः । अनुज्ञानं वा वेदवित्समवायवचनात् । मौ. XII. 48-49; अनुबन्धं परिज्ञाय देशकालौ च तत्त्वतः । सारापराधी चालोक्ष्य दण्डं दण्डेषु पातयेत् । मनु 8. 126, on which मेधातिथि makes the striking remark that this is the fundamental verse about all offences 'उक्तानुक्तदण्डेष्वपराधेषु मातृकाश्लोकोचम् । एतद्वर्षादुत्सारेण सर्वदण्डव्यवहृतिः कर्तव्या ॥'

623. न श्रेयसिर्धं वशोपनयनमस्ति भूतानां यथा दण्ड इत्याचार्याः । नेति कौटिल्यः । तीक्ष्णदण्डो हि भूतानां श्रेयसोत्पत्तिः । सुदुर्दण्डः पारिपूर्वते । यथार्थदण्डः पूज्यः । सुविज्ञात-वनीतो हि दण्डः सदा धर्मोपशान्तिर्बोधयति । अथंशाख I. 4. Vide Manu VII. 103 (=Śānti 140. 8) which appears to be of the same opinion as the ācāryas.

qualities, time, place, the nature of the offence (whether it is repeated or is a first offence). The *Rājatarāṅginī* (VIII. 158) provides that in disputes where parties are in doubt as to their rights it is proper to award punishment with forbearance but where a man starts on an evil path of set purpose (the king and officers) must award severe punishment. In modern times there are controversies among several schools of criminology. Some hold that every man has freedom to act criminally or not or to act in the way he does and that each man has complete moral responsibility for his own acts. On the other hand there are some who go to the other extreme and propound that a so-called criminal act is mostly due to biological, physiological, pathological or sociological conditions, to the upbringing and environment of the person charged with crime. They favour determinism. The ancient Indian writers do not enter into these speculations. But when they said that regard must be paid to time and place and other considerations they were faintly conscious of or were groping towards the ideas of the 2nd school.

Fines are either fixed or not fixed (i. e. variable). They range from a *kāṭṭhi* to the confiscation of all wealth; fixed fines were of three kinds called *prathama sāhasa*, *madhyama sāhasa* (middling amercement) and *uttama sāhasa* (highest). These are variously defined. According to *Śaṅkha-Likhita* the first⁶²⁴ amercement is fine from 24 paṇas to 91, the middling one is from 200 to 500 paṇas and the highest is from six hundred to 1000

624. चतुर्विंशतिरेकपणः प्रथमाहसः । द्विजं पञ्चशतं चैव मध्यमाहसः । दशशतं महतं चोत्तमः । यथासारापकारम् । इत्युल्लिखितं q. by वि. र. p. 664. दण्डविवेक p. 23.

There was great divergence of views about the metal in which the fines were to be paid. According to *Vijñāneśvara* the figures of fines in such verses as *Manu* VIII. 375 (where no metal is specified) the *paṇas* are those of copper, while according to *Bhāruchi* (quoted in *S. V.* p. 150) they are of gold. The *S. V.* remarks that local usage is to be followed. The *V. Mayūkha* (p. 235) states that in all texts (about fines) the mention of a number without specifying the object to which it refers is to be deemed to refer to paṇas, that paṇa is a copper piece one *karṣa* in weight and that *karṣa* is one fourth of a pala. *Br.* (q. by *Sm. C. II.* p. 99) states that the tables in *Manu* (VIII. 132-136) beginning with the dust particle in a beam and ending with *kāśāpāna* is to be followed in ordeals and fines. An interesting sidelight is shed on crimes and their punishments in the Inscription of *Cālukya Vikramāditya V* (dated *śaka* 934) from *Gadag* which provides that the fines for abuse, assault, for drawing out a dagger, for stabbing and for adultery by a bachelor were respectively 2 paṇas, 12 paṇas, 3 *gadyāṇas*, 12 *gadyāṇas* and 3 *gadyāṇas* (vide *E. I.* vol. 20 p. 64.)

in proportion to the value of the matter in dispute or the injury caused. Manu VIII. 138 (= Visnu Dh. S. IV. 10) states that the first, middling and highest fines are respectively 250, 500 and 1000 panas, while Yāj. I. 366 puts these respectively at 270, 540 and 1080. The Mīt. explains that the lesser figures of Manu represent the fines to be awarded for offences committed without set purpose. Nār. (sāhasa, verses 7-8) prescribes that 100 panas is the lowest limit of fines for the lowest kind of *sāhasa*, 500 is the lowest for middling *sāhasa*, 1000 is the lowest fine in what is called the highest amercement (and might include death penalty, forfeiture of all property, banishment, branding and cutting off of a limb). Fines were supposed to be lesser than corporal punishment. Kat. (490-493) lays⁶²⁵ down the following rules: Whatever figure of fine is prescribed in the *smṛti* texts for a wrong it is to be paid to the king in panas of copper or their equivalent. Where the fine is said to be one-fourth or one half of a *māsa*, there it is a golden *māsa* that is meant; when the fine is declared in *māsas*, they are to be understood as those of silver and where the fine is declared in *kṛṇālas* the same is to be understood; a *māsa* is $\frac{1}{16}$ th of a *karṣāpaṇa*. The general rule that lesser punishment is to be inflicted on women is stated by Kat. (487) 'In the case of all offences, women are to suffer half of the fine in money which is prescribed for a male offender (of the same kind) and when the punishment is death for a male, the punishment for a woman would be the excision of a limb.'⁶²⁶ Kant. (III. 3) provides: 'a woman attains ability to enter into transactions on completion of 12 years and men when they are 16; if they disobey after that (i.e. after attaining majority) the woman shall be fined twelve panas and a man twice that amount.'⁶²⁷ Angiras quoted by the Mīt. (on Yāj.

625. कश्चित्को वदत सो दण्डस्तदपराधस्य परमतः । पणानां दण्डं तु स्वात्मनूहयं चायं राजनि ॥ माधवादी द्विपादौ वा दण्डो यत्र यवलिङ्गः । अनिदिष्टं तु सौवर्णं माधवं तत्र काश्यपेत् ॥ यत्रोक्तो माधवेद्वेदो राजतं तत्र निदिष्टेत् । दण्डलैख्योक्तमेव स्वादृकदण्डविनिश्चयः ॥ माधो विश्विभासस्तु जयः काशोपयस्य तु ॥ कात्या. 490-493 q. by स्मृतिक. II. p. 127. दण्डविधेः p. 29-30 (there are various readings in all these). The *स्यव. नि.* p. 202 says: धर्मशास्त्रेण दण्डविधायां संख्यामात्रं निदिष्टं पणानां व्यवहारार्थतया वलसत्वात् संख्येयतया मायेन तत्र पणः एव दण्डस्त इति ।

626. सर्वेषु चारधेषु पुंसो धोर्वेदनाः स्मृतः । तदर्थं योषितो वृद्धरथे पुंसोऽङ्गकर्मणः ॥ कात्या. (487) q. by स्मृतिक. II. p. 321. *स्य. म.* p. 246.

627. द्वादशवर्षा स्त्री माधववशात् भवति षोडशवर्षाः पुमान् । अत ऊर्ध्वमस्तुत्यायां द्वादशपणः स्त्रिया दण्डः पुंसो द्विगुणः ॥ की. III. 3.

III. 243) states that⁶²⁸ an old man over eighty, a boy below sixteen, women and persons suffering from diseases are to be given half *prāyaścitta* and Śaṅkha quoted by the Mit. (on the same verse) that a child less than five commits no crime nor sin by any act and is not to suffer any punishment nor to undergo a *prāyaścitta*⁶²⁹. Under the Indian Penal Code, sec. 82, nothing is an offence which is done by a child under seven years of age. The severity of punishment depended on caste also. In the case of theft, Gaut. XII. 15-16, Manu VIII. 338-39 prescribe that a *vaiśya*, a *ksatriya* and a *brāhmaṇa* should respectively be fined twice, four times and eight times of the fine to be imposed upon a *sūdra* for a theft, since each of these is deemed more and more aware of the heinousness of the crime. Kāt. (485) and Vyāsa state this as a general rule for all offences⁶³⁰. In the case of abuse and defamation the scales are turned in favour of the higher castes as regards fines. Gaut. XII. 1, 8-12, Manu VIII. 267-268 (= Nār. pāruṣya 15-16), Yaj. II. 206-207 prescribe that a *ksatriya* or a *vaiśya* or a *sūdra* abusing or defaming a *brāhmaṇa* was to be respectively punished with the fine of 100 *panas*, 150 *panas* and with corporal punishment (cutting off the tongue), while a *brāhmaṇa* defaming a *ksatriya*, *vaiśya* or *sūdra* was to be fined 50, 25 or 12 *panas* respectively (nothing in the last case acc. to Gaut. XII. 13). In the case of adultery and rape the caste of the offender and of the woman concerned made great difference in the punishment awarded. For adultery with a woman of the same caste Yaj. II. 286 prescribed the highest amercement, the middling one when the paramour was of a higher caste, but if the male be of a lower caste than the woman, the male offender was sentenced to death and the woman had her ears cut off. Corporal punishment assumes (as pointed out by the Dandaviveka p. 20) various forms according as it is meant to cause only harassment (*pain*) or is

628. अशीतिवर्षं वर्षानि बालो वाच्यमवोदयः । यावच्चित्तार्थमर्हन्ति विप्रो व्याधित एव च । ऊर्णकाद्वर्णवर्षं यज्जैवर्णवर्षं च । शरीरदुःखः सुहृन्नेव यावच्चित्तं विमुक्तये । अतो बालवत्समास्य नापराधी न पातकम् । राजदुष्टो न हस्ववर्णः यावच्चित्तं न विद्यते ॥ q. by हरद्वय on यो. II. 6 (without name). The *mita* on ya. III. 243 ascribes the first to अश्विमेध and the last two to शङ्ख.

629. Nār. IV. 85 holds that a boy is called *śiṣu* and is like an embryo till eight and *bāla* or *poṇanda* thereafter till 16.

630. येन दोषेण शुद्रस्य दुष्टो भवति धर्मतः । तेन वेत्सकवित्तानां द्विगुणो द्विगुणो भवेत् ॥ कालपा. 485 q. by सुमित्र. II. 127, वरा. मा. III. 211 (ascribes to वित्तमह); नावच्चित्तं च दुष्टं च शौचं बालो यथाकम् । कल्पवृक्षद्वयद्वये सध्वं कश्यपेऽधमेऽधमम् । वास q. by विश्वकल on या. I. 17.

carried out by cutting off (or destroying) a limb or to cause death. Harassment or pain may be inflicted by imprisonment, beating, putting fetters, by making ridiculous (by the complete shaving of the head, declaring the offence by beat of drum in the presence of the convict, parading him through the streets on an ass) and marking him with signs indicative of offences like theft. Manu (VIII. 125) provides that punishment may fall upon any one (or more) of ten places in the case of the three higher castes, viz. the private parts, the belly, the tongue (either whole or half), the hands, the feet, the eyes, the nose, the ears, wealth and the whole body; but a brāhmaṇa shall depart unhurt from the country (i. e. he is to be only banished). Br. (SBE. 33 p. 388 verses 9-10) speaks of fourteen places of punishment adding the neck, the thumb and index, the forehead, the lips, the hind part, hips, one half of the feet (to Manu's ten) and omitting wealth and the whole body therefrom. Gaut. XII. 43, Kaut. IV. 8, Manu (VIII. 125, 380-381), Yaj. II. 270, Nār. (sāhasa, 9-10), Viṣṇu V. 1-8, Br. (SBE. vol. 33 p. 388 verse 11), Vṛddha-Hārita VII. 191 prescribe that a brāhmaṇa was not to be sentenced to death or corporal punishment for any offence whatever, but if he were guilty of an offence deserving the death penalty, he was to be punished by ordering his entire head to be shaved; he might be banished from the country (from the city acc. to Nār.), a mark appropriate to the grave sin committed by him might be branded on his forehead and he might be paraded on an ass.⁶³¹ Yama,⁶³² quoted by Sm. C. and V. P., while providing that a brāhmaṇa was to be free from undergoing corporal punishment, allows

631. यथाहं ब्राह्मणस्य न वयं ब्राह्मणोर्हति । शिरसो मुण्डनं मुण्डस्तरप निर्वासनं दुरात् । ललाटे चाभिज्ञस्ताड्यः पयावो वदुर्भेग च ॥ नारदः (साहस 9-10). In these days of fasts as part of the technique of *satyagraha* for redress of grievances or for justice pursued by Mahātmā Gāndhī and some of his ardent followers it is interesting to note that the widow of the murdered brāhmaṇa referred to on p. 397 had been undergoing voluntary starvation (*prāyopavāsa*) for four days for securing punishment of her husband's murderer (who she believed was a wizard) and that the king himself being unable to prove the guilt of the accused began to starve himself and found proof by supernatural means (Rājataranginī IV. 82-105).

632. न शरीरो ब्राह्मणस्य दुन्दो भवति कर्हिचित् । दुष्टे तु वन्द्ये च दुष्टा राजा जनं मदापयेत् । अवयवपथं स्वार्थं वा कारयेन्मृतः । मासार्धमासं कुर्वति कार्यं विज्ञातं तत्पथः । यथापराधं विधे तु विकर्मापयति कारयेत् । अवस्था ब्राह्मणा मासो लोकस्मिन्मौदिकी मुक्तिः ॥ यमः quoted by स्मृतीच. II. p. 317, यद. प. p. 393 (only the first).

the king to keep a brāhmaṇa offender in confinement in a secret place and give him bare maintenance or the king may make him do the work of guarding cattle for a month or a fortnight or make him perform other work not fit for a decent brāhmaṇa. The Mit. on Yaj. II. 270 explains that the mark of female private parts for violating *guru's* bed, of a tavern for drinking the liquor called *surā*, a dog's foot for theft, of a headless corpse for brāhmaṇa murder (as laid down by Manu IX. 237 and 240, Viṣṇu Dh. S. V. 4) is to be made on the forehead only if the offender (whether a brāhmaṇa or not) did not perform *prāyaścitta* for those grave sins. Branding with marks appropriate to the crime committed were in vogue in Rome and in Britain up to 1699 (such as the mark of the letter M for murderers, T for thieves &c.). Vide Barnes' 'Story of punishment' p. 62. The Rājatarangīni (IV. 96-106) refers to a case in the reign of king Candrāpīda of Kashmir when a brāhmaṇa guilty of the murder of a brāhmaṇa was exempted from death sentence because of the *smṛti* rule. Manu IX. 241 gives option that a brāhmaṇa (unintentionally) guilty of grave offences may be punished with the middle amercement or he may be banished from the realm keeping all his wealth. The punishments for a brāhmaṇa offender, according to Gaut. XII. 44, were preventing him from doing the same thing again, depriving him of all wealth, taking sureties from him, proclaiming him as a thief in the city banishment, putting on his forehead the mark indicative of his crime. Āp. Dh.S. (II. 10.27. 16-17)⁶³³ lays down that a brāhmaṇa guilty of murder, theft, forcible seizure of another's land was to have his eyes covered over with cloth for the whole of his life (while a śūdra guilty of any of the three was to receive the death sentence). Vṛddha-Hārīta (VII.209-210) says that a brāhmaṇa should be branded on the body for all those offences that entailed corporal punishment for other offenders, that he should have his head shaved, that he should be deprived of all his property and banished from the realm. The force of popular feeling on the point of exempting a brāhmaṇa offender from the death sentence was so great that Elphinstone (Governor of Bombay) in Regulation 14 of 1827, sec. IV (cl. 5) exempted brāhmaṇas and women from death sentence even for murder where public feeling would

633. गुरुवधे स्त्रिये चण्डादाय इति स्वाग्वादाय वधः च क्षुर्गिरिपस्तेतेषु बाह्यजस्य।
आप. ध. सू. II. 10. 27. 16-17.

be shocked⁶³⁴. It is not to be supposed that this exemption of the brāhmaṇa from the death sentence was unanimous or universal. Kai (806) contains this remarkable statement:⁶³⁵ 'Even a brāhmaṇa deserves to be killed if he be guilty of

634. वसु मल्लिकः 'अदण्ड्यो मातापितरौ स्वात्मकदुरोहितौ परित्याजकवानमर्यादं
जन्मकर्मभुवःपीडाचारवशात्' इति, यदपि कात्यायनेन 'आचार्यस्य पितृमातृवार्धवानां तथैव
च। एतेषामपराधेषु दण्डो नैव विधीयते' इति वच्छास्त्रिार्यदण्ड्योनिषेधार्थं न दण्डदण्डमात्रस्य।
स्मृतिच II p. 126. Medhātithi on Manu VIII, 125 makes it clear that the
absence of a fine occurs only in the case of a brāhmaṇa who was a first
offender, who did not commit the offence with forethought and who was
endowed with learning, good family and character. The Sm. C. II, p. 124
relying on Manu IX, 236 says that a brāhmaṇa could be imprisoned but he
could not be subjected to such corporal punishment as cutting off a limb or
whipping. The Smṛtis openly regarded the brāhmaṇa's person as sacred
and so saved his body. The smṛtis endeavoured to reach the ideal of the
rule of law and succeeded to a great extent in doing so. They held that every
man, whatever his rank or condition, was subject to the ordinary law of the
realm and amenable to the jurisdiction of the ordinary tribunals. The only
differential treatment that we find is in the appointment of judges (pp. 272-
273), in the order of taking up causes of litigants (p. 298), in the punishment
for perjury (Manu VIII, 123-124), in the matter of corporal punishment,
in abuse, defamation and assault (pp. 395-397), in punishment for adultery,
in the repayment of debts and in the punishment for theft, which was severer
for a brāhmaṇa. It will be shown below that from the 13th century, as
indicated by the Sm. C., S. V. and Mañanarata, differential punishments
had gone out of vogue. The smṛtis did not, like some modern freedom-loving
people, declare the equality of all before the law on paper and in practice
indulge in lynching. Further the smṛtis required all offenders of whatever
caste to be brought before the same tribunals. Manu VIII, 335 and Yāj.
I, 355 emphasize that there is none who is exempt from punishment
in the king's court whether the person be the king's father or teacher or
friend or mother or wife or a son or a family priest or brother or father-in-
law or maternal uncle. Sāṅkha-Likhita and Kāt. (461) no doubt say that
a king should not punish his parents, his family priest, teacher, near
relatives, forest hermits, ascetics. But, as the Sm. C. II, p. 126 explains,
the real meaning is not that the king is to allow these to escape scot-free,
but that he should not inflict corporal punishments or fines on these, but
should employ admonition or severe reproof towards them. The smṛtis
do not contain rules like those in the Indian Criminal Pro. Code entitling
Europeans and Americans in India to claim a jury preponderantly composed
of their countrymen and claiming trial only by the High Court or like the
privileges of the English Peers to be tried only by the House of Lords for
felonies or the doctrine of the benefit of clergy abolished in 1827. Vide H. of
Dh. vol. II, pp. 140-143 and 147-152 about certain privileges of brāhmaṇas.

635. सर्वस्य पातने स्तेनो ब्राह्मणोऽप्यपातने । अदुष्टो योचितं ह्यत्र हन्तव्यो
ब्राह्मणो हि हि ॥ कात्यायनः by विश्वनाथ on वा. II, 261.

causing abortion, if he be a thief (of gold) or if he kills a brāhmana woman with a sharp weapon or if he kills a chaste woman'. Kautilya (IV. 11) prescribes that a brāhmana who aims at the kingdom or who forces entrance into the king's harem or who incites wild tribes or enemies (against his king) or who foments disaffection (or rebellion) in forts, the country or the army should be sentenced to death by drowning.⁶³⁵ The fact that Carudatta, a brāhmana, is represented as having been condemned to death by king Pālaka in the *Mrocchakatika* indicates that the sentence of death against brāhmanas was not entirely unheard of. It appears from Fick's 'Social organisation' &c. p. 213 that in many Jātaka passages the execution of brāhmanas is referred to.

The Śāntiparva chap. 268 contains an interesting dialogue between king Dyumatsena and his son prince Satyavat on the subject of the punishment of death, which contains some of the arguments forcibly urged in these days by those that are opposed to capital punishment altogether. The prince pleads that punishment should be light even for grave offences, that when the sentence of death is carried out in the case of robbers,⁶³⁶ several innocent persons (such as the wife, the mother, the son of the condemned man) suffer great loss (and they may die also), that if offenders give themselves up to priests, swear before them that they will never commit sin, they may be let off after undergoing penance, that if great men go astray their punishment should be proportionate to their greatness. The king replies that in former ages when people were most truthful, soft-hearted, and not hot-tempered the punishment of saying 'lie on you' sufficed, then vocal remonstrances and upbraidings sufficed, but in the later ages (of Kali) corporal punishment and death sentence have to be resorted to and that some people are not deterred even by the fear of death sentence.

A few remarks will be made on each of the several modes of punishment. The sentence of death was, acc. to Kām. XIV. 16, Śukra IV. 1. 93, to be avoided even in the gravest offences

635. राजपकासुकमन्तःपुरपथर्षकमदम्पनिशोभादके दुर्गराद्वणकोपकं वा शिरो-
हस्तादिपिकं घातयेत् । आक्षयं तमः यदेतदेत । अर्थशास्त्र IV. 11.

636a. दसद्विहन्ति वै राजा भूपतोऽप्यपनामसः । भार्या माता पिता पुत्रो हन्यते
पुत्रेण वै । न मूलपातः कर्तव्यः &c. शान्ति 268. 10-11.

except for the offence of subverting the state.⁶³⁷ Viṣṇu Dh. S. V, 1 provides that all persons except brāhmanas guilty of the mahāpātakas may be sentenced to death. But Manu IX. 236 says that this extreme penalty was to be awarded only if they performed no prāyascitta. Kaut. (IV. 11) prescribes death sentence for causing the death of any one with a sharp weapon. Vṛddha-Harita (VII. 190) prescribes it for incendiaries, poisoners, murderers, robbers, bad characters, rogues and those guilty of grave sins. The death sentence was carried out in various ways such as by giving poison or by trampling at the feet of an elephant, or by a sharp weapon (like a sword), by being burnt or drowned⁶³⁸. Impalement was a punishment prescribed by Manu IX. 276 for thieves guilty of housebreaking by night (after first cutting off their hands), by Yāj. II. 273 for those who made another a captive or stole horses and elephants or killed another by the use of force and by Vṛddha-Harita VII. 202 for the murderer of a brāhmaṇa or for one who killed a woman, a child or a cow. Death sentence by being trampled under the feet of an elephant continued up to the times of the Marathas. The Daśakumāracarita 4th Uccyāsa shows that a thief could be trampled upon by an elephant by way of punishment. Vide 'Selections from Peshwa's Daftar' (edited by Mr. G. S. Sardesai) vol. 43 No. 143 p. 114 (dated 7-9-1775 A. D.), where out of seven dacoits of the *Beral* caste two were ordered to be trampled to death at the feet of an elephant⁶³⁹ and five were ordered to be simply beheaded. Death sentence is said by the Dandaviveka (p. 20) to be simple (*suddha*), which is of two kinds, *avicitra* when the offender is beheaded (with a sword), and *citra* or *vicitra* (when the offender is impaled or burnt) and it is *miśra* (when his hands or feet or other limbs are cut off and then he is killed)⁶⁴⁰. Simple death

637. ममत्सन्धवदस्येष्टं दुष्टं पाणान्तिकं त्यजेत् । जले सान्नायदारात् युक्तदण्डः प्रशस्यते । काम. XIV. 16. This is q. by दुष्ट. p. 61 verse 346.

638. विषेष्टु (!) इन्तिगुजगणखानलनलादिभिः । पापानां पाण्डुरस्य वधदण्डः यकीर्तिः । मानसोद्गम II. 20, verse 1237, p. 144.

639. In 'Pandyas Kingdom' by Prof. K. A. Nilkant Sastri p. 224 the sentence for the murderer of a brāhmaṇa is shown to have been that of being tied to the leg of a he-buffalo and being dragged by it.

640. The word '*suddha-vadha*' is used by Manu IX. 279 and the words '*suddha*' and '*citra*' occur in Kauṣiṭhīya IV. 11 and also in Sānti 63. 22 राज्ञो वधं चिकीर्ष्यस्तस्य चित्रो वधो भवेत् । आदीपकस्य स्तेनस्य वर्णमङ्कुरि-
कस्य च ॥

is prescribed by Manu IX. 271 for those who abet thieves by giving them subsistence, instruments of house-breaking or asylum. If a man of a low caste had sexual intercourse with a woman of a higher caste (with or without her consent) or kidnapped a maiden he was to be sentenced to death (Manu VIII. 366, Yaj. II. 286-288, 294). Vas. XXI 1-5 prescribed for a śūdra, vaiśya or ksatriya guilty of adultery with a brāhmaṇa woman the horrible punishment of being burnt to death after being respectively covered with *śiraya* grass, with red *darbhās* and *śara* leaves respectively and similar punishment for a śūdra paramour of a ksatriya or vaiśya woman and for a vaiśya paramour of a ksatriya woman. The consenting woman (adulteress) was, acc. to Vas. XXI 1-3, to be shaved, to have her head anointed with clarified butter and to be paraded naked on an ass and left to die on the Great Journey, while, acc. to Gaut. XXIII. 14 and Manu VIII. 371, an adulteress, vain of her charms or the wealth of her parents, was to be openly devoured by dogs, if her paramour was a man of lower caste. Śaṅkha⁶⁴¹ prescribes this punishment (of being devoured by dogs) for a woman's paramour of a lower caste and for the erring woman death by burning. Vṛddha-Harita VII. 192 prescribes that in the case of a woman who is a confirmed adulteress, or who destroys her foetus, her husband should have her ears, nose and lips cut off and then she should be banished and verses 220-221 prescribe death by being burnt with grass (*kaṭāgni*) for those guilty of incest. These severe penalties for adultery were very much relaxed and softened by later smṛti writers as is shown in H. of Dh. vol. II. pp. 571-573. A man who made a breach in the embankment of a lake or tank (and thereby caused it to become dry) may be sentenced to death by drowning (Manu IX. 279) or a woman who was extremely wicked (such as one who killed her own child in the womb) or who murdered a man or who destroyed the embankments of a tank may have a stone tied round her neck and be drowned, provided she be not pregnant at the time of the sentence (Yaj. II. 278). Yaj. II. 279 (= Matsyapurāṇa 227. 200) prescribes death by being gored by the horns of bulls (after the nose, lips, ears and hands are cut off) for a woman who is guilty of poisoning (the food or drink of another) or who is guilty of incendiarism or who kills her husband, elders

641. श्रेयसः शपनश्रापिनं राजा वद्वन्वा श्रमिः वाद्वेत्ताज्ञेयेनां वदेत् । इह
quoted by वि. र. p. 320.

or her own child (provided she is not pregnant)⁶⁴². Yāj. II. 382 provides death by being burnt with the fire of straw for those who set fire to growing crops, houses, forests, village, pastures and threshing floors or who approach the queen. Nār. (pārusya, verse 31) prescribes that one who strikes with a weapon the king, even though the latter be at fault, should be impaled and roasted in fire. These examples are enough to convey an idea of the crimes for which the sentence of death was provided in some of the ancient *smṛtis*. Manu VIII. 272, Nār. (pārusya 24), Viṣṇu Dh. S. V. 24 prescribe the pouring of boiling oil in the mouth and ears of a śūdra who through insolence tries to expound dharma to brāhmaṇas. Cutting off limbs as a punishment (particularly hands and feet or fingers) was common in the case of thieves, pickpockets and cut-purses (Manu IX. 276-277, Nār., *pariśista* verse 32, Yāj. II. 274). Excision of the tongue was the sentence when a śūdra abused a brāhmaṇa or a ksatriya by falsely charging him with some grave sin (Āp. Dh. S. II. 10. 27. 14, Manu VIII. 270, Nārada, pārusya 22), when a śūdra loudly repeated the Veda along with twice-born persons (Gaut. XII. 4), when a person abused the king (Nār., pārusya 30), when a person repeatedly proclaimed what was disliked by the king or divulged the secret policy of the king (Yāj. II. 303). Excision of the male organ was prescribed for a śūdra who sexually approached a woman of the three higher varṇas (Gaut. XII. 2), for any one guilty of the rape of another's wife (Vṛddha-Hārta VII. 201 and also confiscation of all property), for any one guilty of incest or intercourse with mother, mother's sister, paternal aunt, sister,

642. The general rule was that women were not to be killed on any account. Vide H. of Dh. vol. II, pp. 575, 593-94. Certain offences were exceptions. Even as to them Vas. XXI. 10 and Yāj. I. 72 suggest another and very mild alternative *viz.* abandonment (*tyāga*), when a woman conceives from intercourse with a man of lower varṇa or when a woman was guilty of killing her husband or foetus. Acc. to the Mit. on Yāj. III. 268 the king appears to have had to undergo some expiation for ordering the death of a guilty woman. In the 18th century the famous judge of the Peshwa's court, Rāmāstri Prabhū, ordered a woman guilty of a brāhmaṇa's murder to undergo only the expiation of circumambulating the holy shrine and hill of Tryambakeśvara near Nashik ('Selections from Peshwa's Daftar', vol. 43 No. 136 pp. 121-122). Under sec. 382 of the Indian Criminal Procedure Code 'if a woman sentenced to death is found to be pregnant, the High Court shall order the execution of the sentence to be postponed and may, if it thinks fit, commute the sentence to transportation for life'.

the wife of an uncle, friend or pupil, daughter, daughter-in-law, teacher's wife, a woman come for refuge, the queen, an ascetic woman, a wet-nurse and any chaste woman or a woman of a higher varna (Nār., *śūdrapūṇyayoga* 73-75). The nose, the ears and the hands were cut off in the case of an offender guilty of selling false gold or forbidden flesh such as that of a dog (Yaj. II. 297). For branding, vide Gaut. XII. 44, Baud. Dh. S. I. 10. 19, Nār. (śāhasa 10), Manu XI. 237 (= Matsya 227. 16), Viṣṇu Dh. S. V. 3-7. The *Dandaviveka* (p. 47) states that branding was to be resorted to if the proper penance was not performed and if the offence was intentional. Yaj. II. 202 provides branding for a gambler using false dice and (II. 294) for persons of the three higher *varṇas* having intercourse with a very low caste woman and Dakṣa VII. 33 prescribes it for an ascetic giving up his duties. The *Rājatarāṅgiṇī* mentions (VI. 108-112) that king Yaśaskara (939-948 A. D.) of Kashmir branded on a brāhmana's forehead the mark of dog's foot. Keśavapāṇḍita in his *Dandanīti-prakarana* (p. 6) quotes the author of the *Valjyanti* (Nanda-pāṇḍita) to the effect that the making of marks was to be effected with the juice of the marking nut in the case of brāhmanas and with a red-hot iron *śalākā* in the case of others. In England about a hundred years ago branding for desertion from the army was practised. Manu VIII. 370 prescribes the shaving of the head as a punishment for a woman who pollutes a maiden, Nār. (śāhasa 10) prescribes it for a brāhmana who is not sentenced to death on account of his caste, Śaṅkha-Likhita (q. by Aparārka p. 807) for one who abuses officers, brāhmanas and elders. Megasthenes (Fragment XXVII. p. 72) notes 'If one is guilty of a very heinous offence the king orders his hair to be cropped, this being a punishment to the last degree infamous'. Imprisonment for life is prescribed by Viṣṇu V. 71 for striking out both eyes of a man and by Śūkra IV. 1. 88 (for repeating an offence more than three times) For imprisonment with labour, vide Śūkra IV. 1. 92 and 108-109. Flogging was prescribed⁶⁴³ by Viṣṇu Dh. S. V. 105 for a woman.

643. The punishment of whipping is allowed in England for several offences; vide 'Laws of England' (ed. by Lord Halsam, vol. IX, pp. 229-230). In India under the Prisons Act (IX of 1894) by section 46 whipping is allowed for certain prison offences and under the Whipping Act (IV of 1909) whipping is awarded for certain offences such as theft, house-breaking, dacoity, rape and for juvenile offenders. In modern times many persons interested in criminology and penology condemn most strongly the sentences of death and whipping. *पञ्चमहायुगे वे केचिद् द्वासत्वे वे च संस्थिताः । अनीकास्ते तु निर्विहास्तेषां दुष्टश्च तद्वन्मृ । श्रीवाटोन्नतहृद्धानो दुरिद्राणां तु रोमिणाम् । शिखाविह्वलज्वाद्योर्विद्वज्जम्बुपविर्द्धम् ॥* कात्या. q. in *त्यज. नि.* pp. 531-532.

in her monthly course touching intentionally members of the higher castes. It was also prescribed for offenders who were slaves or who were dependents and for women, minors, lunatics, old men, poor men and those suffering from diseases (Kat.). The punishment of banishment was prescribed for brāhmanas guilty of the gravest offences meriting death sentence (Gaut. XII. 44, Manu IX. 241, VIII. 380, Viṣṇu Dh. S. V. 3 and 8, Baud Dh. S. I. 10, 19, Yāj. II. 270). It was often associated with branding. Banishment is also prescribed by Yāj. I. 339 for officers taking bribes (and also confiscation of all wealth), for a perjured brāhmana witness (Yāj. II. 81), for one who embezzles the money of a corporation or transgresses the conventions agreed upon by a guild or village &c (Yāj. II. 187, Manu VIII. 219, Viṣṇu Dh. S. V. 167-168), for playing with false dice (Yāj. II. 202 and Nār., *dyūtasamāhvaṃ* 6), for a brāhmana guilty of very heinous offences⁶⁴⁴ (Śānti 14. 116). Śukra (IV. 1. 98-108) contains a long list of offenders that deserve to be sentenced to banishment. Confiscation of all property was the punishment for several offences such as the commission of the *mahāpātakas* by persons other than brāhmanas, provided they committed them unintentionally (Manu IX. 242), for perjury, for taking bribes by *sabhyas* (Viṣṇu Dh. S. V. 179-180). Nār. (*prakīrṇaka* 10-11) provides a humane rule that even when the king orders the confiscation of all the property of an offender he should not deprive the offender of the tools of his trade or the tools of his craft, such as arms in the case of a soldier, materials of art in the case of artisans, ornaments of courtizans, musical instruments of musicians. Śāṅkha-Likhita⁶⁴⁵ quoted by V. R. p. 656 contain a similar provision. Enhanced punishment was prescribed for committing an offence again. Viṣṇu Dh. S. III. 93 holds that a king should never pardon or let off a man who is guilty of a second

644. महासाहसिकं चित्तं कृत्वा ह्येव विपदासयेत् । शांति 14. 116.

645. शिल्पिनः कारकः शूद्रास्तेषां स्वभिचारोऽपि शिल्पोपकरणानि रक्षेत् । तुलमान-
मस्तिमानसहस्रधानि वणिज्जपधानां, श्रेयसीयमरूपोऽशकटकर्षकद्रव्यानि कर्षकाणां, वायमान्हा-
लङ्कारवासोऽसि रत्नोपजीविनो, यज्ञस्यालङ्कारवासोऽसि वैश्वानो, अस्त्राणि चायुधोपजी-
विनो सर्वेषां कर्तव्यद्रव्यानि नाशान्नि राज्ञः । अधात्मिकेण हि दुष्टयाः पापपुद्गलाद्यादिपे-
याश्च सर्वान्ति तेभ्यः पापोऽपमानानां तस्यान्नापनाज्जातुपकरणान् कुर्यात्सम्भूता हि दृष्टिर्भ-
वति । दृष्टिपुलो निवासः । तैत्तिरीयसंहिताः स्तोत्रं राजदुरवते । शङ्खलेखित q. by वि. र.
p. 656, which explains 'स्वभिचारोऽपि सर्वस्वापहारयोग्येषु अपराधेषु ... भक्तं कृपि-
सिद्धपदमर्थं कर्षणद्वयं दत्तादि'. Compare section 60 (a, b, c) of the Indian
Civil Pro. Code for the property which is not liable to attachment and sale
in execution of a decree.

offence (though a first offender may be let off with a mere admonition). Kaut. IV. 10 states that when a person is a first offender as to theft at a holy place or as a pickpocket or house-breaking from the roof, his thumb and index finger may be cut off or he may be fined 54 panas, for a second offence all fingers may be cut or a fine of 100 panas may be levied; for a third offence the punishment is cutting of the right hand or a fine of 400 panas and for the fourth death in any way the king may direct. Manu IX. 277, Yaj. II. 274, Visnu Dh. S. V. 136 contain a similar rule. Vide Āp. Dh. S. II. 10, 27. 11-13 for adultery. If several people conspire together and kill or injure a single man the punishment was to be double of what a single man committing the same offence would receive (Kaut. III. 19, Yaj. II. 281, Visnu Dh. S. V. 73). As indicative of the superstitious of ancient (and even modern) times punishment for witchcraft may be mentioned. Kaut. IV. 4 prescribes⁶⁴⁶ the employment of spies to find out those who profess to use charms for securing illicit love and banish them and adds that persons who are engaged in witchcraft to injure others may be similarly dealt with. In the times of the Peshwas wizards⁶⁴⁷ and raisers of ghosts appear to have been frequent and were severely dealt with by the people themselves by being put to death, but the State generally confiscated the property or cut off the alleged wizard's finger. Up to the beginning of the 18th century even in England wretched old women were frequently convicted as witches and hanged⁶⁴⁸.

646. ये वा मन्त्रयोगमूलकर्मभिः इमांशानि कैश्चि संवन्नकारकं मन्त्रेण तं सची ज्ञात्वा
अनुग्रहं वाच्यं स्तुतवां इदितरे वा कामये सा वा पतितकामवतामर्षं चार्षः प्रलिप्यतामिति । स
चेत्तथा कुर्वात्संवननकारक इति पवारयेत् । तेन कुर्यान्निवारयतीत्याहुवती । कौटिल्य
IV. 4.

647. Vide 'Selections from Peshwa's records' vol. 43 pp. 25-26 about frequent witchcraft in Kolhapur territories (and a wizard of the *mang* caste being impaled), p. 32 (for a woman who was killed as a witch by the Patils without Government orders) and Rao Bahadur Wad's extracts from Peshwa's Diaries vol. II. p. 7 (for confiscation of Vatan and razing to the ground the house of a ghost-raiser) and vol. VIII. p. 147 (for cutting off a finger).

648. Vide e. g. 6 State Trials p. 647 (a trial of witches held in 1665 A. D. before Sir Matthew Hale C. B. who condemned them to death) and 8 State Trials p. 1017 (in 1682) and Stephens' 'History of Cr. Law of England' vol. II. p. 435 for numerous cases of trials for witchcraft between 1633 to 1712 A. D. Vide Lea's 'Superstition and force' (ed. of 1878) p. 425 as to torture of heretics for extracting confessions expressly allowed by Papal Bulls and pp. 306-307 for torture being allowed in sorcery and witchcraft cases in England up to the 17th century. Vide a very discerning and interesting paper on 'Witchcraft in Ancient India' by Dr. Winternitz in Indian Antiquary, vol. 28 pp. 71-83.

Manu IX. 290 (= Matsya 227, 183) prescribes the very mild punishment of the fine of 200 *papas* for all incantations intended to destroy life, for magic rites and various kinds of raising ghosts and goblins. Medhātithi and Kullūka say that if the magic rites are successful the punishment would be that for murder. Br. (S. B. E. vol. 33 p. 361 verse 16) provides banishment for those who practise incantations with roots.

Kaṭṭh in II. 5 prescribes⁶⁴⁹ that a jail should be constructed in the capital provided with separate accommodation for men and women kept apart and well guarded at the entrances. He further provides⁶⁵⁰ that among the duties of the *nāgaraka* is to let out of the jail on the day of the festival of the birth constellation of the king and on the full moon day (of every month) such persons as are young, very old, suffering from diseases and helpless, or those who are charitably disposed may pay the fines or others bind themselves by an agreement to pay in cash the fines for the offences for which the prisoners are jailed (and then the prisoners may be released). The persons jailed may be set free on their working every day or once in five days or by undergoing corporal punishment (whipping &c.), paying fines in cash. Prisoners may be released from jail (as a favour) on the conquest of fresh territory or on the coronation of the Crown Prince or on the birth of a son to the king. In the Delhi Topra Pillar Edict No. IV (Corpus I. I vol. I. p. 123 and E. I. vol. II. pp. 253-54) Emperor Aśoka promulgates that he gives three days' respite to prisoners on whom judgment has been passed and who have been condemned to death and in the 5th Pillar Edict of Delhi Topra (Corpus I. I vol. I. p. 126-128 and E. I. vol. II. pp. 258-259) he says that he let off prisoners 25 times in 26 years (which is in conformity with Kaṭṭh's dictum cited above). In the first separate Edicts at Dhauḷi Aśoka addresses his officers of justice in the capital (*Nagaranayāvahārikāḥ*) that they should so act that even a single person should not unnecessarily suffer imprisonment or pain. In spite of this if we are to believe Yuan Chwang, Aśoka in his early career was most cruel and had constructed a jail

649. विमकलीपुत्रस्थानमपमारातः सुसुतकथं बन्धनामारं कारयेत् । कौटिल्य II. 5.

650. बन्धनागारे च बालहृद्वायाधितानाधानां च जातनक्षत्रपौर्णमासीषु विमर्शः पुण्यसंज्ञाः समपातुष्वद्वा वा दीपनिष्कायं दद्यात् । दिवसे पञ्चरात्रे वा बन्धनस्यायं विमोचयेत् । कर्मणा कायदण्डेन हिरण्यानुग्रहेण वा । अपूर्वदेनापिमे पुनराजाभिषेकने । पुनराज्यमपि वा मोक्षो बन्धनस्य विधीयते । कौटिल्य II. 36.

that was called Hell-prison of Aśoka (vide Watters, vol. II pp. 88-90). Manu IX, 288 requires that all jails should be so built as to abut on the royal road where the offenders suffering pain and in bad condition would be seen by all (in order to deter others from committing offences). The *Silappadikāram*, one of the earliest works in Tamil, mentions the release of prisoners on the king's birthday and at the founding of a temple (pp. 38-39 of Mr. Dikshitar's translation). Kālidāsa in the *Mālavikāgnimitra*⁶⁵¹ (Act IV) makes the Vidūṣaka report to the king, 'the astrologers think that, as the constellation on which Your Majesty was born is in evil aspect now, let all prisoners be released'. Kālidāsa (in *Raghu* 17. 19) alludes to the release of prisoners and the commutation of death sentences at the time of the coronation of king Atithi. The *Bṛhat-Saṁhitā* (47-81) states that when the king takes the *Puṣyamaṇa* (ceremonial bath on the day on which the moon is in conjunction with the Puṣya constellation in the month of Pausa or every month) he may order release except as to those prisoners who were convicted for offences connected with his own person or with the harem.⁶⁵² In the *Mṛcchakaṭika* (Act X) also various occasions for the release of prisoners are mentioned by the executioner. The *Harsacarita*⁶⁵³ (II, 2nd para) refers to the usage of releasing prisoners at the time of a coronation and on the birth of Hara (IV,). The prisoners are described in the latter passage as having long beards and as darkened by the accumulation of dirt on their bodies.

Manu IX, 243 enjoins upon the king not to appropriate to himself the property of a man guilty of the *mahāpātaka*s (by way of fine or confiscation) and warns that if he takes it out of greed he is tainted by the guilt of the offender. Manu (IX, 244-45) recommends that such fine may be cast into water as an offering to Varuṇa (the Lord of waters) who wields sceptre even over kings or may be bestowed on learned and virtuous

651. द्वेषवन्तैर्वैज्ञापितो राजा । सोपसर्गं नो नश्ये सर्ववन्धनमोक्षः क्रियता-
मिति । मातृविकाग्रिनिब्र IV, after verse 5; बन्धवच्छेदे स बद्धायां वधाहोषामवधत्ताम् ।
पुत्राणां च पुरो मोक्षमर्षोर्द्ध चादिशङ्खवात् ॥ *Raghu*, 17, 19.

652. बन्धनमोक्षं कुप्यद्विन्मन्तरक्षोपहृत्तव्यं । इहसंदिता 47, 81, on which इत्येत
remarks 'बन्धनमोक्षं अन्तःपुरे वा वैद्यैः कृतः &c.'

653. अनित्योद्दिष्टस्य सर्वस्यां पुष्टिण्यां सकलकुलसम्पन्नमोक्षमकरोत्यथपन्तुषणस-
मयः । हर्षचरित II, para 2; यत्सम्पन्नसुजातजडितानमानि बहलमलवद्वुकलद्वुकल
कायानि नदपतः कलिकातस्य बान्धवकुलानीवाकुलान्धवावन्तः सुखानि बन्धनवन्धनानि ।
हर्षचरित IV.

brāhmaṇas, that are lords of the whole world. Manu (IX. 246-247) further states that in the country where the king avoids taking the property of very wicked sinners men become long-lived, crops spring up, there is no infant mortality &c.

Generally no one was allowed to take the law into his own hands except as to recovery of debts (which will be discussed below). But Nār. (pārusya⁶⁵⁴ 11-14) contains the following remarkable passage: 'If a śvapāka, a meda, a caṇḍāla, one devoid of a limb, one gaining livelihood by killing animals, an elephant driver, vrūṭya (i. e. deprived of caste for non-performance of upanayana), a slave, one who disregards his elders or spiritual teacher—if these should transgress the limits they must observe towards their superiors, they should be punished then and there by the person offended and the person so doing is not regarded as committing an offence (equal to theft). Should any such low person insult another (who is his superior) that man himself shall punish him and the king has nothing to do with the punishment. These people are like the refuse (dregs) of humanity and their property also is impure. The king is entitled to inflict bodily punishment (whipping), but he should not inflict fines on them'. The Mit. on Yaj. II. 270 quotes a text of Vṛddha-Manu of similar import and explains that the words 'the king should avoid taking fines' refer to cases of grave offences⁶⁵⁵.

Something must be said about the law of Limitation. In the smṛtis and digests rules of Limitation play very little part for several reasons. As on spiritual grounds, which will be set out under the title of mādāna, not only the debtor, but also his sons, grandsons and great-grandsons were liable to pay a debt (Mit. on Yaj. II. 50), there was no scope at all for prescribing any period of limitation so far as recovery of debts was concerned. Unpaid purchase money was treated as a debt. In other matters also the smṛtis and dharmasāstras, under the influence of religious and other-worldly considerations always lean against

654. श्वपाकेद्वन्द्वशालत्यङ्गुलेषु पधुचितु । दन्तिपत्रापदासंघे सुर्वाचार्यातिशये च ।
मर्षाद्वैतिक्रमे सद्यो यात एवावसासनम् । न च तद्वन्द्वपाकस्य स्तेपमाहुर्मनीषिणः ।
छात्रिर्वैत नीचः सन्त यनं दुर । स एव विनये कुर्यात् तद्धिनपचाङ्क दुरः । मला क्षेत्रे मलपेषु
यनमेवा मलात्मकम् । अवि तावत्तवेद्वाजा नार्थदण्डेन दण्डयेत् । नारदः (पाचप 11-14);
For श्वपाक, मेदः, श्वशाल and दान्त्य side H. of Dh. vol. II pp. 97, 92, 81, 378
respectively.

655. पशुनर्द्धनमुपयनं 'अप्यायोपासविचित्राह्वनयो मलात्मकम् । अनस्तान् यात-
वेद्वाजा नार्थदण्डेन दण्डयेत्' इति तद्वि महापराधविषयम् । मिता. on वा. II. 270.

friends, relatives, brāhmanas and the servants of the king on their request.

4. It appears that a period of twenty years was prescribed for avoiding a document on the ground of patent defects by one who had seen it and was affected by it. Vide Kāt. 298-300. Similarly when a thing is enjoyed for twenty years on the basis of a writing in the presence of an opponent able (to challenge the enjoyment and the writing) then the writing becomes unassailable (even if the witnesses are all dead or there is no other document for comparison). Vide Kāt. (299)⁶⁵⁸.
5. A deed settling a boundary dispute becomes unassailable after twenty years. Vide Kāt. (301)⁶⁵⁹.
6. No suit can lie on a document executed beyond thirty years, which has never been seen by any body nor read out (by the creditor to any body) even though the attesting witnesses may be living. Vide Br. (S. B. E. vol. 33 p. 308 verse 29)⁶⁶⁰.

In the preceding pages we have passed in review the law of judicial procedure, evidence and limitation. A careful perusal will convince any unbiassed reader that the Dharmasāstras evolved during the course of centuries an indigenous system of judicial procedure of a high order. Nārada, Brhaspati and Kātyāyana represent the high water mark of ancient Indian adjective law. These writers flourished before 600 A. D. and the first two of them are probably older by several centuries than that date. They present an orderly system providing for the appointment and duties of judges, proper pleadings, the law of evidence and limitation, decrees and their execution, crimes and punishments. This system compares most favourably with any system of judicial procedure prevalent anywhere in the West up to the 18th century A. D.

658. दृष्टे पत्रे स्रुटान् दोषाश्चोक्तवाङ्मनिको यदि । ततो विज्ञातिवर्षाणि स्थितं पत्रं स्थिरं भवेत् ॥ कात्या. (298) q. by अथ. मा. p. 340. परा. मा. III. p. 136; इत्थं सन्निधावर्षो येन लेख्येन भुज्यते । वर्षाणि विज्ञाति यावत्तत्पत्रं दोषवर्जितम् ॥ कात्या. 299 q. by मित्रा. on वा. II. 24, अपराकं p. 690, अथ. मा. p. 340.

659. सीमाविवादो निर्णयति सीमापत्रं विधीयते । तस्य दोषाः नवकस्या यावद्वर्षाणि विज्ञातिः ॥ कात्या. 301 q. by मित्रा. on वा. II. 24, अपराकं p. 691, परा. मा. III. p. 136.

660. लेख्यं विज्ञातमतीतमद्वयद्वयभाषितं च पत्रं । न तस्मिन्निगमान्ति तिष्ठत्यपि हि माशेषः ॥ बृह. प. by अपराकं p. 692, अथ. मा. p. 340.

CHAPTER XVI

CONTRACTS

There are only three titles of law, viz. recovery of debts, the relation of husband and wife (*striputrasaṃyoga*) and partition of wealth (*dāyabhāga*) that are of importance to modern Hindus, since to a very large extent they are even now governed in these matters by the ancient Hindu Law as interpreted by the commentators. These three topics therefore have to be described in detail while other titles will not and cannot be allowed to occupy much space. In almost all *smṛtis* and digests of Hindu Law *ṛnādāna* (recovery of debts) is treated of first. Therefore here also that subject will be taken up first. A good deal of the matter falling under the title of the relation of husband and wife has already been dealt with in the 3rd volume of the History of Dharmaśāstra pp. 427-636. The topic of *dāyabhāga* will be dealt with last of all, the other topics being taken up in the same order as in Manu. Many of the *vyavahārapadas* are concerned with the law of contracts in various aspects, viz. the contract of debt, of pledge or mortgage, of bailments, of sale, of partnership, of hire and service.

Our writers do not set out with an analysis of the conception of contract in general. They had before them the ancient 18 titles of law, many of which related to various kinds of contracts and therefore they take up one title after another, in the order contained in Manu or in Nārada (as the Sm. C. II. p. 206 expressly says). But it is not to be supposed that they did not evolve certain general principles about contracts. They do say a good deal about the competence of persons to enter into contracts, about fraud vitiating all contracts, about damages for breach of contract &c. Similarly the dharmaśāstras do not lay down a general Code of rules applicable to all transfers of immovable property, nor do they treat of transfers by way of sale, mortgage or gift in separate sections. What they have to say on these transfers is tacked on to some *vyavahārapada* e. g. they speak about sales and exchanges of land under *asvāmi-vikraya* and *śmāvivāda*, about gifts under *dattāpradānika* and about mortgages under *ṛnādāna*. As this work has to represent what the ancient law was like the same

arrangement has been followed here. Similarly the law of crimes is not to be found in one place. It is scattered under different titles of law such as *vākparusya*, *dagdparusya*, *sāhasa*, *strisaṅgrahana* and *steya*; nor is there a complete analysis of intention or motive or of the right of private defence, although all these subjects are briefly dealt with in the *smṛtis* in different places.

A great deal has been said by ancient writers about what persons are competent to enter into transactions (*vyavahāra*). The *Arthaśāstra* (in III 1)⁶⁶¹ has a lengthy disquisition on it. Briefly, it holds that dependant persons, minors, extremely old people, those charged with grave sins, *sannyāsins*, persons who are devoid of a limb and those who are addicted to vices (like drinking and whoring) are incompetent and agreements made with such people are invalid. Among dependant people Kautilya mentions a son when the father is alive (and manages the affairs), a father when he has a son (who manages the family affairs), a brother who has left the family, a younger brother whose share has not been separated, a woman whose husband or son is alive, a slave or a hired servant. He states that these may enter into binding agreements if those on whom they are dependant authorize them to do so. He further says that contracts made by persons that are at the time of making them intoxicated or are under the influence of wrath or are distressed or are of unsound mind or under duress (imprisoned or confined) are invalid. Yāj. (II 31-32) concisely puts down the same propositions by saying that all transactions brought about by force or fraud should be declared (by the king) to be unenforceable, so also those entered into by women or the other persons specified above or entered into at night, or in the interior of the house or outside the town or village (in a forest &c.) or with one's enemy or by persons unconnected with or unauthorized by the persons who are to be bound by them.⁶⁶² Manu (VIII 165 and 168) also declares that all transactions (such as sale, mortgage, gift) brought about by force or fraud are

661. अपाञ्चपञ्चिष्ठ कृताः, पित्रमवा दूषण, पित्रा दूषयता, निष्कुलेन प्राया, कनिष्ठेनाविभक्तोऽपि, यस्मिन्वा दूषयता वा श्रिया, दासादितकाभ्याम्, अपाततत्तत्पराभ्याम्, अभिज्ञातपत्न्यादित्यप्युक्तमभिधायकम् निरुद्धमपराभ्याम्, । तत्रापि कुटुम्बेन सर्वलोभेनोपायदृष्टेन वा कृता व्यवहारान् निश्चयेत् । अर्थशास्त्र III. 1.

662. It should be noted that the rules of Kaup. and Yāj. are in remarkable agreement with sections 11 to 19 of the Indian Contract Act (IX of 1872).

null and void. Nār. IV. 26-42 treat this subject⁶⁶³ exhaustively. Some of Nārada's dicta are interesting. He says: 'in this world three are independent viz. the king, the Vedic teacher and the head of the house in his own house (32). Wives, sons and slaves are not independent; the head of the house has independent power as to what belongs to him by inheritance (34). Kat. (497) also prescribes that one should not give a loan to women, minors or slaves. When the texts say that women are incompetent to make contracts, what is meant is that they cannot make contracts binding on their husbands or family or against the family property. Women are not inherently incompetent to deal with their own separate property except that the husband has some control (these matters will be discussed at length later on under *stridhana*). Another proposition laid down by Yāj. II. 23, Nār. IV. 97, Kat. (517) and others⁶⁶⁴ is that in all transactions relating to a debt or any other title of law the last act is the deciding factor; but in the cases of gift, pledge or purchase each prior transaction (of gift &c.) is of superior efficacy to the succeeding one.⁶⁶⁵

After the establishment of British rule in India during about 150 years numerous publications dealing with Hindu customs and usages and the Hindu law of debts, contracts, adoption, family rights, partition and inheritance have been published. It is impossible to give an exhaustive list of these nor is it necessary to do so. Most of them have now only an academic or historic interest. But a few of them must be mentioned for their worth, for purposes of study and for a knowledge of the modern Hindu Law as administered by the British Indian courts. They are: Bannerjee's 'Hindu Law of Marriage and *stridhan*'

663. The Vyavahāramātrikā p. 288 quotes five verses as from Kaundinya which are almost the same as Nārada IV. 29, 30, 39, 34, 40 respectively. The learned editor does not notice this.

664. यश्चादियं सर्वं वदन्त्युच्यते किं वा । तस्मिन्नाधिकीयेषु पूर्वा पूर्वा बलीयसी ।
Nār. IV. 97 : आधिकीयेषु पूर्वेषु कृतांता यत्किञ्चित् । तयोः पूर्वकृतं प्राथम्यं तत्कर्ता चोर-
द्वयभाह् । कारवा. 517 q. by स्मृतिच. II. p. 144, नि. र. p. 35, म. सि. p. 237.

665. For example, if A establishes that he lent a sum to B but if the latter establishes that he repaid the amount, this later fact of repayment is decisive of the dispute if A files a suit for recovery of the money. If A mortgages a field to B for a loan and then mortgages the same field to C, the mortgage of B, being prior, is superior to that made in favour of C. The same principle is laid down in section 48 of the Transfer of Property Act (IV. of 1882).

(5th ed. of 1923); Colebrooke's Digest of Hindu Law, which is a translation of Jagannātha's Vivādabhangārṇava (3rd ed. of 1864, Madras); the several volumes of the Bombay Gazetteer and the Gazetteers of the other provinces and the Imperial Gazetteer of India; A. Ghosh's 'Law of endowments' (2nd ed., 1938); Dr. Jolly's Tagore Law Lectures on Partition, Inheritance and Adoption and *Recht und Sitte* translated by Prof. Batakriṣṇa Ghosh (1928); Mayne's Hindu Law (10th ed. of 1938); Muḥṭa's Hindu Law (9th ed. of 1940); K. L. Sarkar's 'Mīmāṃsa rules of Interpretation'; G. C. Sarkar's Hindu Law and Hindu Law of Adoption (2nd ed. 1916); Rajkumar Sarvadhikari's 'Principles of the Hindu Law of Inheritance' (2nd ed. 1922), Dr. P. N. Sen's 'General Principles of Hindu Jurisprudence' (1918); Steele's Law and custom of Hindu castes in the Deccan (London, 1868); Stoke's Hindu Law Texts (a work constantly quoted by the Courts and the Privy Council) containing English translations of the Mitākṣarā, the Dayabhāga, the Vyavahāramayūkha, the Dattakamīmāṃsā, the Dattakacandrikā, the Dayakramasaṅgraha; West and Bühler's Digest of Hindu Law.

The idea of the liability to pay off one's debts was developed in India in the most ancient times. In Rg. VIII. 47. 17⁶⁶⁶ the poet exclaims 'Let us drive away the evil effects of bad dreams as we pay off debts'. In Rg. X. 34. 10 (the gambler's lament) it is stated that the gambler, because he owes a (gambling) debt, is afraid and approaches the houses of others at night, desiring wealth'.⁶⁶⁷ This indicates that a debtor was afraid of being detained by his creditor in those days. Rg. VIII. 66. 10 indicates that money-lenders made a stipulation to receive double of what they lent, 'Indra strikes by his power all *paris* who make representations of taking double'.⁶⁶⁸ The Ait. Br. 33. 1 (*ṛgam-asmin am-nayati*)⁶⁶⁹ employs the very verb '*am-nayati*' which occurs in Rg. VIII. 47. 17. The Atharvaveda VI. 117. 3 and Tai. Br. III. 7. 9. 8 contain the same verse about a man being free from the obligations of this world, the next

666. यथा कलौ यथा शर्कं यथा जलं संनयामसि । एवा दुष्टवर्णं सर्वमाप्ये सं नथा-
मरुमेहसो न उतयः सुउतयो न उतयः ॥ अ. VIII. 47. 17.

667. कणाया विपद्भूमिच्छमानोऽप्येषामस्तुपमकमेति ॥ अ. X. 34. 10.

668. इन्द्रो विशालं वेकनाटं अर्धुञ्ज जत कृत्वा परीरति ॥ अ. VIII. 66. 10
The word वेकनाट is very like a *prākrit* word.

669. जायमानो वै बाह्यजग्निभिर्ज्ज्जवा जायते बह्वर्च्येन कविभ्यो यज्ञेन देवेभ्यः
यज्ञया विभुष एव वा अशुणो वा दुर्वी यथा बह्वर्चरिषासां । तै. सं. VI 3. 10, 5; अमम-
स्मिन् संनयत्यमुतलं च गच्छति । पिता दुष्टस्य जातस्य पश्येन्नीकतो सुखम् ॥ ऐ. अ. 33. 1.

world (of pits) and the third world (the world of gods).⁶⁷⁰ The Tai. S. (III. 3. 8. 1-2) uses the very word 'kusīda', which occurs⁶⁷¹ in the Dharmaśāstras and smṛtis (for money-lending) when it says, 'O Agni! whatever debt has not been paid back by me, the tribute that I owe to Yama, here do I make return of it; may I be freed from that debt!'. The Śat. Br. XIII. 4. 3. 11 associates *kusīda* with black magic in the Pariplava. The Nirukta (VI. 32) while commenting on Rg. III. 53. 14 explains the word 'Pramaganda' occurring therein as 'one who is born of a family that is extremely usurious'.⁶⁷² Pāṇini employs the technical word 'uttamarna' (creditor) in his sūtra 'dhāre-uttamarnaḥ' (I. 4. 35), he speaks of 'ādhamarnya' (the position of a debtor) in II. 3. 70 and the word 'pratibhū' occurs in Pāṇini II. 3. 39, the word 'vṛddhi' (interest) in V. 1. 47. Pāṇini (IV. 4. 31) derives the words 'kusīdika' and 'kusīdikin'. It is noteworthy that Pāṇini does not derive or mention the word *sārdhuṣika*, which is employed by even Āp. Dh. S. and Baud. Dh. S. and which is derived by Kātyāyana (the grammarian) in Vārtika 3 on Pāṇini IV. 4. 30, in which Pāṇini refers to such words as 'dvaiguṇika' or 'traiguṇika' which were applied to people that carried on the condemned methods of money-lending, viz. extorting twofold or threefold of the money lent (the sūtra is 'prayacchati garhyam'). Brahmanaspati is spoken of as 'one who recovers a debt (*ṛṇam-ādadhī*) in Rg. II. 24. 13 and the Ādityas as those 'who, themselves being the observers of *ṛta* (the universal Law of Right), collect⁶⁷³ debts' (Rg. II. 27. 4). In Rg. VIII. 32. 16 it is said that those priests who extract (and offer) Soma juice do not indeed owe a debt (to the gods). Divodāsa is said in Rg. VI. 61. 1 to have been the gift of Sarasvatī to Vadhyaśva as a son to pay off debts (*ṛṇacyutam*).⁶⁷⁴ These passages certainly establish that in the remote ages of the

670. अमुना अस्मिन्नमुनाः परस्मिन् तुवीचे लोके अमुनाः स्थान । ये देवपाना उत विनुषपानाः सर्वान्पयो अमुना आ कीरेम ॥ तै. ब्रा. III. 7. 9. 8; अथर्ववेद VI. 117. 3 (with very slight variations).

671. वस्तुसिद्धमवधीसं मयि येन वमरप बलिना चरामि । इदमेव सञ्जितवद्वे तदेवचद्वे अमुनो भवामि ॥ तै. सं. III. 3. 8. 1-3; अथर्ववेद VI. 117. 1 closely agrees.

672. मगन्तुः कुसीदी माकुदो मामागमिष्यति इदंति तदपत्वं वममन्तुः अगमन्तुः कुसीदिदुलीभः । निरुक्त VI. 32.

673. दीप्योपियो रक्षमाणा असुर्वसुतावातश्चदमाणा जगानि । ऋ. II. 27. 4.

674. इषमददाइभसमृणश्चुतं दिवोदासं वायव्याप वाङ्मये । ऋ. VI. 61. 1.

Rgveda it was a firm belief that men were under obligations to gods and *pitrs*, which could be fulfilled only by worship (*yajña*) and by the birth of a son. These passages contain the germ of the doctrine of the three religious and spiritual debts that a man owed to gods, Manes (*pitrs*) and sages, which he paid off by sacrifices, by the birth of a son and by vedic study (vide Tai. S. VI. 3. 10. 5, Śat. Br. I. 7. 2. 11 and Alt. Br. 33. 1 quoted in H. of D. vol. II pp. 270, 560 notes 621 and 1302 and above n. 669). Gradually further universal obligations came to be added to this theory of spiritual debts. The *Ādiparva* (120. 17-20) holds that men owe four debts, viz the three vedic ones and the fourth to humanity in general (which is paid back by goodness to all) and *Anuśāsana* 37. 17 raises them to five (adding *brāhmaṇas* and guests to the well-known three)⁶⁷⁵. It appears to me that this theory of spiritual debts being already in the air, the same sanctity came gradually to be transferred to one's promises to repay monetary debts and carry out other secular engagements. The word *ṛṇa* had been applied both to spiritual and secular debts. It is on account of this that the son was not only desired for repaying the spiritual debt owed to one's ancestors, but he was also expected to free his father (if the father could not himself repay the monetary debt) from the liability he incurred to his creditor. *Nār.* IV. 5-9 puts this clearly and most emphatically : " fathers desire to have sons for their own benefit thinking in their heart ' he will release me from liability to creditors and debtors ' (or probably ' from high or low debts ' i. e. spiritual and earthly debts). Three deceased (ancestors) must be honoured (by a man) and he must subsist on three (descendants) that come after him. These (the first three) series of ancestors rely (for repayment) of their twofold debts (spiritual and secular) on the fourth in descent. If a man fails to pay on demand a debt or promised gift, that sum (by the addition of interest) goes on growing till it amounts to a hundred crores and when a hundred crores are reached he is born again and again in the house of his creditor as a slave in order to repay the debt (by his labour). If an ascetic or a *brāhmaṇa* perpetually keeping the sacred fire (*agnihotra*) dies

675. अग्नेश्चतुर्भिः संसृक्ता जायन्ते मानवा भूवि । पितृदेवर्षिमनुर्देवैस्तेत्यथ धर्मतः ।
... यज्ञैस्तु देवान् धीणाति स्वाशपायस्यतां सुनीव । इवैः आग्नेः पितृभ्यापि आसृजंस्थेन मान-
वान् । आदिवर्षे 120, 17-20; अगस्त्यमुत्तरं देवानामसृजोणां च तथैव च । पितृणामथ
विषाणामतिधीनां च यजमानम् । अनुशासन 37. 17.

without discharging his debts, the whole merit due to his austerities and the perpetual tending of fire belongs to his creditors".⁶⁷⁶ Kāt. (551, 591) expresses the same idea but adds that a debtor who has not repaid money borrowed may be born as a slave, a servant, a woman or a beast in the house of his creditor. It was this belief that led to the doctrine of the pious obligation of the son to pay off his father's debts even if he received no property from the father.⁶⁷⁷

Nārada IV. 98 defines 'kusida' in a rather obscure verse as 'the receiving of money paid in consequence of the original (amount advanced) and the profit (agreed to be paid) thereon and those are called *kusida* who maintain themselves by this occupation'. Brhaspati (S. B. E. 33 p. 320 verse 2) derives⁶⁷⁸ *kusida* as 'that is called *kusida*, which is taken fourfold or (even) eightfold without any qualm (by a person) from a wretched man who is sinking (or distressed)'. Nār. IV. 110 defines *vārdhuṣa* as the interest (in kind) on grain,⁶⁷⁹ but Āp. Dh. S. I. 6. 18. 22 and Baud. Dh. S. employ the word 'vārdhuṣika' and Āp. Dh. S. I. 9. 27. 10 has a verse in which the word *vṛddhi* occurs. Vas. (IL 41-42 = Baud. Dh. S. I. 5. 93-94) quotes

676. दूतनीपाक्षपांशो वा जपजीप्याक्षपोऽग्रतः । एतदुपसर्गस्तानमुपयोः स्वाश्व-
सुपके ॥ तपस्वी आग्निदेवी च क्षणस्य क्षिपते यदि । तपश्चैवाग्निदेव च सर्वे तद्धनिना
धनम् ॥ नारद IV. 6 and 9: विपूणां सुखमिज्जैर्दमिनेषाधमादूणात् । विमोक्षसु एतस्त-
स्माद्विष्णुमिति पितरः सुजाय ॥ यद्भारवादिकमादाय स्वामिने च दद्याति यः । स तस्य दासो भव्यः
कीं पशुर्वा जायते सुते ॥ कात्या. 551, 591, quoted by Sm. C. pp. 165 and 161, परा,
मा III. pp. 261 and 263, स्व. म. p. 277. Dr. Jolly's translation of Nār. IV. 6
(S. B. E. 33, p. 43) 'three must be revered before the rest' does not
seem to be correct. What Nār. means is that a man has to offer worship in
śrāddha to three ancestors while he himself depends upon (*upajīvyāstrayukh*)
his three descendants for the *pinda* (they offer). *Upajīvyā* does not mean
'to be reverenced' but 'to be subsisted on'. The Sm. C. II. p. 161 notes
that the verse 'apassai &c.' (Nār. IV. 9) occurs in a Purāṇa.

677. स्थानलभानिमित्तं हि दानग्रहणमिदमेत । तत्कुसीदमिति पोक्तं तेन वृत्तिः
कुसीदिनाम् ॥ नारद IV. 98: The वि. वि. explains: स्थानमवसरान् मूलधनस्य
तस्मिन्स्तत्पेक्ष लभो वृद्धिस्तदर्थं दानग्रहणम् । 'देवद्वार्यं दीयत इति दानं इति श्रुत्यतोः
तस्य ग्रहणमधमर्णेन' । निवाचचन्द्र p. 2.

678. कुम्भितास्तीव्रतश्चैव निर्विशङ्कैः प्रमुखाः । वायुर्धनं चायुर्धनं कुसीदाश्चयमन-
सूतम् ॥ वृहस्पति p. by स्व. म. p. 167, मन्त्ररत्न.

679a. वृद्धिस्तु पोक्ता धान्यस्य वायुर्धनं तदुदाहरणम् । नारद IV. 110.

two verses: 'a vārdhusika (usurer) is one who taking cheap grain lends it on condition of receiving a quantity of grain of high price and is condemned among the *brahmanūjina* (students of the veda). Brāhmana murder and usury were weighed in a balance; the murderer of a brāhmana rose to the top while the usurer trembled'. Here usury of the type of the one described in Vaa. II. 41 (and not all lending of money at interest) is condemned as a great sin. Gaut. XII. 36, Vaa. II. 50, Kauṭ. III. 11, Manu VIII. 140-141 and others declare it righteous (dharmya) moneylending when an 80th part is stipulated as the interest per month.⁶⁷⁹

Megasthenes (fragment XXVII B p. 72) states: 'The Indians neither put out money at usury nor know how to borrow;' but he is under some misapprehension, for he again says (p. 73) 'one who is unable to recover a loan or deposit has no remedy at law. All the creditor can do is to blame himself for trusting a rogue'.

Nar. IV. 1 states that the principal topics under the title of *ṛṇādātina* are seven: what debts must be paid and what not; by whom, where and in what manner (they are to be paid); and the rules about advancing the loan and receiving it back. The first five of these relate to the debtor and the last two to the creditor. Bṛhaspati (S. B. E. 33 p. 320 v. 4) says that interest (*ṛṇādā*) is described to be of four kinds by some, of five kinds by others and of six kinds by still others. Nar. (IV. 102-104) names four kinds and defines them, viz. *kāritā* (interest that is stipulated by the debtor himself), *śālīkā* (interest accruing and payable every month), *kāyikā* (interest of a *papa* or quarter *papa* to be paid every day without the principal being liable to be reduced, whatever interest may have been recovered), *calakṛṇādā* (interest on interest called compound interest). Manu VIII. 153 mentions these four and commentators thereon give varying interpretations. Bṛhaspati (S. B. E. 33 p. 321 verse 5) and Vyāsa (q. by Sm. C. II. p. 154) define *kāyikā* as interest received from the body i. e. milk received from a cow pledged or the work put in by a slave or by a bull pledged. Br. (S. B. E. vol. 33 p. 321 verses 7-8)

679. कुसीद्वद्विषयो विनातिः षड्वर्गविज्ञे मासह । शौ. XII. 26; सप्तद्वयमा
धर्मो मासहविः षड्वर्गविः । कौटिल्य III. 11.

adds two more varieties viz. *sikhāyārdhi*⁶⁸⁰ (hair-like interest i. e. interest payable every day and so growing every day, just as the top-knot on one's head grows every day) and *bhogalābha* (profit by enjoyment i. e. making use of a house or taking the produce of a field in lieu of interest in the case of a mortgage). Gaut. (XII. 31-32) mentions the six, but instead of *bhogalābha* he uses the word '*ādhibhoga*', which is defined by Kat. (501) as a transaction in which the complete enjoyment of the thing pledged or mortgaged is to be the interest. Kat. (498-500) defines *kāritā*, *sikhāyārdhi* and *bhogalābha*.

Br. (S. B. E. 33 p. 319 verse 1) states⁶⁸¹ that the creditor should always advance a loan after taking an adequate pledge or a deposit (with a mutual friend) or a reliable surety and after committing the transaction to writing or making the loan in the presence of witnesses. The interest may be either stipulated (*kṛta*) at the time of the loan or not stipulated (*akṛta*), as indicated in *Viṣṇu* VI. 4. *Yāj.* II. 38 and *Viṣṇu Dh. S.* VI. 3 state the general rule that debtors of all castes may pay to creditors of all castes the interest settled by mutual agreement and the rate of interest stipulated may be with reference to an

680. *इद्धिश्चार्धिका* चेत्ता पञ्चधान्यैः पञ्चानिर्ता । बहुविधानि सनाकृताः तस्य-
सन्ता निवेद्यन्ते ॥ बृह. १. ४२ स्तुतिच. II. p. 154, स्व. नि. p. 224 (reads बहुविधान्यैः);
कापिका कर्मसंयुक्ता मासद्वयाद्वा तु कारिका । इद्धेइद्धिश्चार्धिकाः कारिता जगिमा इता ॥
अथैव पश्यते वा तु शिक्षाइद्धिस्तु सा स्मृता । धर्माचारः (लोमः १. 1) इत्ता श्रुताऽङ्गस्तपः
पञ्चानिर्ताः ॥ बृह. १. ४२ by अपराक p. 642, स्तुतिच. II. p. 154, परा म. III.
pp. 220-221; स्व. नि. p. 225 ascribes these to मारदुः शिरोव पश्येति मित्वे शिरस्ते-
वार्धिकावर्ति । मृते वृत्ते तथैवा शिक्षाइद्धिस्तुः स्मृता ॥ कारिका in बृहद्व. ७०. १. XII. 32
and म. ति. p. 233; अथिभोगस्तद्वेद्यो यो इद्धिस्तु परिकल्पितः । यद्यपि वत्त चपे स्वादा-
पिभोगः स उच्यते ॥ कारिका १. ४२ by स्तुतिच. II. p. 154, नि. र. p. 12, वि. चि. p. 4.

681. धारिपुर्णं गृहीत्वाधि बन्धे वा साधुलप्रकम् । लेख्यार्थं साक्षिन्वा ज्ञेयं दद्यादानी
मवा ॥ बृह. १. ४२ स्तुतिच. II. 135, परा म. III. p. 220: 'धारिपुर्णं सङ्घिकमुल्लस्य-
यवांसिर्त्यर्थः ॥ स्तुतिच. II. p. 135. The words *ādhi* and *bandha* are treated
as synonyms by the *Amarakośa* and by Br. (S. B. E. vol. 33 p. 323 verse 17)
himself. The difference made by some between the two is this: *ādhi* is a
pledge or mortgage of a chattel or immovable property to the creditor
himself (with possession or without), while *bandha* consists in placing in the
hands of a mutual friend a thing belonging to the debtor in order to inspire
confidence (in the creditor). 'विश्रितं चन्वत्तद्व्याप्यमाह मारदुः निक्षेपो निवहस्तस्यो
बन्धो निव्यासकः स्मृतः ॥ इति ।' मारदु १. ४२ by स्व. य. p. 224. The sv. m. (p. 166)
defines *bandha* as an undertaking by the debtor that he would not alienate by
sale, gift or mortgage the house, land or other property of his until the debt
due to the creditor is paid off. This is clearly an hypothecation without
possession; धारिताकमुपे न सोध्यते वापदेतइद्धिश्चार्धिकादौनापिकवाधिकाव्यावृत्तं न कारित्वा-
मीति निर्वाणो बन्धः । विश्रितस्तद्व्याप्यमाह मारदुः निक्षेपो वन्ध इत्यर्थः । मद्रास्तु निवह. ms.).

that double the interest stated above may be taken when there is nothing pledged to secure the debt. Yāj. and Vyāsa provide that this rate is the proper one when some thing is pledged or mortgaged by way of security. Yāj. II. 37, Manu VIII. 142 (= Nār. IV. 100), Viṣṇu Dh. S. VI. 2 provide an option that two, three, four or five per cent per month may be charged as interest in the order of the *varṇas*⁶⁶⁴ (i. e. 2 per cent per month for a brāhmaṇa debtor and so on). Yāj. II. 37 allows these rates only if there is nothing pledged by way of security. Vyāsa⁶⁶⁵ (in Par. M. III. p. 221) provided that the monthly rate of interest was 1/10th of the principal lent when a pledge or mortgage was given as against the loan, 1/20th when only a surety was offered and two per cent per month when money was lent on personal security. The Anuśāsanaparva 117.20 condemns to Hell those who take exorbitant interest. Kauṭ. prescribed (as stated in n. 688) fines for taking heavier interest than that allowed by him. Kāt. (498) provides that if a debtor himself stipulates a higher rate of interest than is allowed by the śāstra in times of difficulty (in order to induce the creditor to part with his money) that stipulated interest must be paid but a rate of interest imposed by the creditor otherwise (by force &c.) should not be enforced by the Court.⁶⁶⁶ It is probable that these rates are specified because of the economic conditions of those times which proved too much even for the ancient sages or different mercantile usages about interest prevailed in different countries at different times, as expressly stated by Nār. IV. 105-106 that⁶⁶⁷ these high rates (including eight per cent per month) had to be paid according to the law merchant in different countries. Manu VIII. 141 (= Nār. IV. 100) holds that to take two per cent per month (on unsecured debts) is not improper. In medieval times also the rate of interest was rather high e. g. interest at 25 per cent is said to have been

664. निम्नकृणु ०० या. II. 39 quotes a sūtra of Br. for raising the rate of interest according to the varṇa of the debtor (पादोपचयात्कृणेनेतरेषाम्).

665. सधन्ये भाग आशीतः पादो भागः सलघके. निराधारे द्विकृतं मासतम उवाच. ॥ व्यास ०, in परा. ना. III. p. 221, अ. य. p. 227.

666. कणिक्केन तु या वृद्धिरधिका संमकारिता । अपत्कालकृता नित्ये वाताया कारिता तु सा । अन्वया कारिता वृद्धिर्न वातया कथंचन । कारया 495 ० by स्मृतिच. II. 154, कुरुल्ल ०० मनु. VIII. 153, वि. १. p. 10. The वि. १ explains: कणिक्केन तु स्वकार्यतया आशीतभागद्विकृततादिकपवृद्धिर्वाधिका वृद्धिर्न्यवस्थापिता सा कारिता सा च तेन देया, अन्वया तेनाप्यवस्थापिता बलेन स्वीकारितापि न देया ।

667. या वृद्धिस्तद्विषयया चार्जनमवतिष्ठते । द्विगुणे विगुणे अपि तथाप्यन्य चतुर्गुणम् । सचाहमुक्तमप्यस्मिन् देयं वेदोपनिषदौ ॥ नारद IV. 105-106.

charged on a deposit of six *paṭyāṇas* kept with the *mahājana*s of Śivapura (vide Yewur Ins. in E. I. XII. p. 273). Yāj. II. 38 provides that those debtors who carry on trade by traversing dense forests and those who are sea-faring traders should respectively pay 10 per cent and 20 per cent per month and the Mīl. adds that these exorbitant rates are allowed because of the great danger of the loss of even the principal as the debtors may perish by ship-wreck or from the attacks of robbers and wild beasts. Manu VIII. 157 leaves the rate of interest in the case of seafaring merchants to those who are clever in these matters and who know the proper time and place. Kaut. (III. 11) states⁶⁸⁸ that the prescribed (*dharmaṃ*) rate of interest is 1½ *paṇa* per cent per month, but in transactions (or in commercial usage) it is five *paṇas* per cent per month (as the highest, it appears), that those who traverse forests and those who carry on maritime trade should pay respectively ten and twenty per cent per month, that those who exceed or induce creditors to exceed these rates should be punished with the first-amerement, that each of the witnesses to such usurious transactions should be punished with half of the above fine.

Other rules laid down in the *smṛtis* relate to the maximum that can be recovered by a creditor from a debtor at one time. All are agreed that the creditor cannot recover at one time from the debtor for principal and interest more than double of the money lent. Vide Kaut. (III. 11), Manu VIII. 151, Gaut. XII. 28, Yāj. II. 39, Viṣṇu Dh. VI. 11, Nār. IV. 107, Kāt. (509). This is called the rule of *dvayanya*⁶⁸⁹ in the *smṛtis* and of *dāmdupa* in modern times. It will be explained in detail a little below. As regards the interest in kind on articles lent there is some difference of opinion, which need not be gone into in great detail. Manu VIII. 151 and Gaut. XII. 33 state that on loans of grain, fruits, wool and beasts of burden, and products like ghee and milk had from cattle the total recoverable cannot exceed in any case five times of what is lent. Yāj. II. 39 states

688. मयावृण्णा धर्मो मासवृत्तिः पणप्रत्ययः । पञ्चपणाः स्यावहारिकीः । द्वापणाः कालहारकाणाम् । शिशुनिपणाः सामुद्राणाम् । ततः परे कर्तुः कारयेत्तुभ्य इवः मासवृणुः । श्रोत्रान्तिकेनैव प्रारभ्येद्वयः । अर्थशास्त्र III. 11.

689. चिरस्थाने द्वैगुण्यं प्रयोगस्य । मी. XII. 28; चिरस्थस्य वरा इद्विर्द्विगुणाः । विष्णुध. VI. 11; चिरस्थानः संस्तम्भयति वा मूलवृद्धिगुणं दद्यात् । कौटिल्य III. 11; कुसीद्विद्विगुण्यं नात्येति मनुवाक्यः । मनु VIII. 151. There is another reading मनुवाक्यः.

check on the creditors' rapacity. Several propositions are laid down in the *Mit.*,⁶⁹² the *Vyavahāramayūkha* and other digests that graft exceptions on the general rule, and that flow from the interpretation of Manu VIII 151 in both readings. The first modification is that if interest is received every day, month or year and is not claimed in a lump sum at one time then the total interest received by a creditor may be even several times more than the principal lent. Br. provides (S. B. E. vol. 33 p. 321 verse 11) that every day interest or bodily interest and *bhogalābha* may be taken by the creditor (irrespective of the question of *daṣagūṇya*) as long as the principal is not paid⁶⁹³. (2) Further, if after the interest has accumulated for some time, there is a fresh agreement with the same debtor whereby the sum lent together with interest due is taken as the principal and interest is agreed to be paid on the amount so arrived at, then the total recoverable after this fresh agreement may exceed double the original sum lent. Manu (VIII 154-155) and Br. (S. B. E. vol. 33 p. 331 verse 60) allow such a fresh agreement. But if the debtor does not make a fresh agreement then the rule of *dāmdupat* would apply. (3) If after the sum due to the creditor has become double of the principal lent, the creditor accepts another man as the debtor (who takes the liability on himself), then the creditor may recover from the substituted debtor after the lapse of years an amount which may be more than double of the sum originally lent. (4) If the debtor pays a part of the principal or if the creditor makes a concession (called '*reka*' in the *Mit.* on Yāj. II 39) and reduces the total recoverable or if the debtor receives an additional amount of money (called '*seka*' in the *Mit.*) and it is added to the original amount borrowed and a fresh agreement is made between the parties to put the whole to interest, then the rule of *dāmdupat* would not apply.

692. एतच्च सङ्कलपयोगे सङ्कलपकरणे च वेदितव्यम् । दुरुपागन्तरसंक्रमणेन प्रयोगान्तरकरणे तस्मिन्नेव वा दुरुपे अनेकदाः प्रयोगान्तरकरणे सुवर्णादिकं द्वैगुण्यमतिक्रम्य पूर्ववद्भवेत् । सङ्कलपयोगेऽपि यतिदिवं यतिमासं यतिसंवत्सरं वा दुरुपागकरणेऽधमर्णे द्वेवस्य द्वैगुण्यसंभवात्पूर्वाद्धतदुरुपाग सह द्वैगुण्यमतिक्रम्य तर्धेव त्वेव । मित्ता. on वा. II, 39.

693. सिद्धादुद्धिं कायिकां च भोगलाभे तथैव च । धनी तावत्समादृष्टाद्यान्मूलं न शोधयेत् ॥ दृष्ट. q. by स्मृतिच. II, p. 161, परा. मा. III, p. 230, सिद्धादुद्धि p. 2.

The rule of *dāmdupat* has been acted upon by the courts in India in modern times⁶⁹⁴. Though under the Transfer of property Act before its amendment in 1929 there was a conflict of decisions, since 1929 it is settled that the rule of *dāmdupat* does not apply to mortgages governed by the Transfer of Property Act. But the rule is so reasonable and humane that the Deccan Agriculturists' Relief Act (XVII of 1879) has made (by sec. 13) the rule of *dāmdupat* applicable to all agriculturists as defined by the Act, whether Hindus or non-Hindus; and the Bombay Agricultural Debtors Relief Act (of 1939), sec. 42, the Madras Debt Conciliation Act (XI of 1936, sec. 16) do the same.

A loan has to be returned on demand if no time is fixed for repayment or on the expiry of the time (if one has been fixed by the parties) or when interest ceases on account of becoming equal to the principal (Br. in S. B. E. vol. 33 p. 328 *verse* 47). Interest stops when on the debtor offering to pay the loan the creditor refuses to accept it and the debtor deposits the money in the hands of a third person (Gaut. XII. 30, Yāj. II. 44). With Yāj. II. 44 section 84 of the Transfer of Property Act (IV. of 1882) may be compared. Vas. II. 49 states the remarkable rule that interest stops the moment the king dies and begins to run only after the coronation of the successor.⁶⁹⁵ Nār. II. 39

694. *Vida Balkrishna v. Gopal* I. L. R. 1 Bom. 73 (where it was held that the rule of *dāmdupat* should not be extended to apply to the amount recoverable in execution of the decree of a civil court), *Nanchand v. Bapusaheb* I. L. R. 3 Bom. 131 (held that the rule of *dāmdupat* does not apply when the defendant is a non-Hindu), *Gopal v. Gangaram* I. L. R. 20 Bom. 721 F. B. (the rule is excluded from mortgages the terms of which necessitate the existence of an account between the mortgagor and the mortgagee in possession about the rents and profits), *Samlarabai v. Jayawant* I. L. R. 531, 555 (rule applies between all Hindu debtors and creditors both in respect of simple as well as mortgage debts), *Khimji v. Chanilal* 31 Bom. L. R. 419 (by agreement interest which does not exceed the principal may be capitalized). It is interesting to find that in ancient Egypt the legal maximum rate of interest was thirty per cent and it was forbidden to allow interest to increase beyond the double of the principal. Vide Wilkinson's 'Manners and Customs of the ancient Egyptians' (First Series), 1842, vol. II p. 50. Usury was condemned in ancient Egypt, among the Jews (vide Psalm XV. 5, Ezek. XVIII. 8 and 17, Lev. XXV. 36-37) and by the ancient Greeks (as more heinous than even the murder of a *brāhmana*, H. of Dh. vol. II. p. 124 n. 262).

695. राजा तु मृतभावेन द्रामदुर्द्धि विनाशयेत् । पुनः राजाभिषेकेन द्रामदुर्द्धे च वर्धते । बसिष्ठ II. 49.

(S. B. E. vol. 33 p. 33) provides that no interest runs on the price of commodities, on wages, on a deposit, on a fine, on what has been idly promised (to bards and the like) and on the stake won in gambling, unless there is a special or express agreement to pay interest.⁶⁹⁶ Kāt. (508) has a similar verse,⁶⁹⁷ but adds hides, crops, liquor, bride-price and suretyship debts to some of those mentioned by Nār. Kaut. (III. 11) provides that no interest runs where the debtor is a person engaged in a Vedic sacrifice of long duration, or is suffering from a disease or is staying at his teacher's house (*gurukula*) for study or is a minor or is a man without any substance. As regards some cases where originally a thing is lent to a person out of friendship or because he asked a loan of it, Nār. (IV. 108) and Kāt. (502-505) lay down certain rules which are quoted in the Mīt. (on Yaj. II. 38) and other works. Nār. (IV. 108) prescribes⁶⁹⁸ that no interest ever attaches to things loaned through friendship, unless there is an express stipulation to that effect; but even in the absence of a stipulation interest starts running after the expiry of six months. Nār. IV. 109 and Kāt. (505) both lay down that a loan (of money or an article) made through friendship cannot begin to earn interest as long as no demand is made for its return. If the debtor refuses to return it after it is demanded interest begins to run at the rate of five per cent. Kāt. (502-504)⁶⁹⁹ lays down three propositions about *yācitaka* (a temporary loan of money or of an article): (1) When a person takes such a loan and goes to another country without

696. पण्यमूल्यं भुतिर्प्राप्तो दण्डो यच्चापहारकम् । वृथादानाक्षिकपणा वर्धन्ते नावि-
वक्षिताः ॥ नारद II. 36; मिता. on वा. II. 38, परा. मा. III. p. 224, अ. म. p. 169
read दण्डो यच्च मकल्पितः वि. चि. p. 7 reads यच्चाभिहारिकम् (what is appropriated
by fraud or force), अपहारकम् is translated by Jolly as 'what is abandoned
by one and found by another' (S. B. E. 33 p. 33).

697. चर्मसंस्पर्शवशते पण्यमूल्ये च सर्वदा । अक्षिप्तकेषु न हृदिः स्वाध्यायविभा स्या-
वसेषु च ॥ कात्या. (508) q. by स्मृतिक. II. p. 157, परा. मा. III. p. 225, वि. र. p. 20;
दीर्घसंस्पर्शाभिरुद्धलोपवद्दं बालमसंस्पर्शं वा नर्पमनुवर्षते । कौ. III. 11.

698. न हृदिः पीतिदुष्टानां स्वाध्यायकारिता कञ्चित् । अनाकारितमप्यूर्ध्वं कस्तर्वा-
क्षिप्यते ॥ नारद IV. 108, which स्मृतिक. II. p. 156 explains 'अनाकारिता अकृता ।
पीतिदुष्टानां वसिष्ठाचनयतिदानदिमनिर्देशाश्चानामिति शेषः । पीतिदुष्टं तु पत्निकञ्चिज
तदर्थं यथाचितम् । पाण्डमानममूर्ध्वं चोद्धर्षते पादके शतम् ॥ नारद IV. 109.

699. यो याचितकमादाव तमदुष्टा दिव्यं ब्रजेत् । ऊर्ध्वं संवत्सराक्षयं तद्धनं हृदिमाप्य-
यात् ॥ कृत्योद्धारमदुष्टा यो याचितस्तु दिव्यं ब्रजेत् । ऊर्ध्वं मासत्रयाक्षयं तद्धनं हृदिमाप्य-
यात् ॥ स्वदेशेऽपि स्थितो यस्तु न दद्याथाचितः कञ्चित् । तं ततोऽकारितां हृदिमनिर्दिष्टं
च दापयेत् ॥ कात्या. (502-504) q. by मिता. on वा. II. 38, वि. र. pp. 12-16,
स्मृतिक. II. p. 156.

returning it, that loan begins to acquire interest after a year from the date of the loan (though no demand be made); (2) if a person after taking a loan goes to another⁷⁰⁰ country without returning it even when pressed by the lender to return it that loan begins to acquire interest three months (after demand); (3) when the borrower of a thing does not return it even though he is pressed to return it, the king should make him pay interest from that day (i. e. day of demand), though it was not agreed upon, though he remained in the country and though he be unwilling to pay interest. The Madanaratna says that in these cases where no interest is settled beforehand and where the texts do not specify the rate (as Kāt. 505-506 do viz. what is lent through friendship, a deposit, balance of interest, unpaid purchase money, if not returned on demand, begin to carry interest at five per cent per month), the rate of interest would be the one stated by Yāj. II. 37 (viz. 1/80th per month) and Viṣṇu VI. 4. (*akṛtūmayi vatsarātīkrameṇa yathāvihitām*).

*Ādhi*⁷⁰¹ means pledge of a movable or mortgage of immovable property. Nār. IV. 117 remarks⁷⁰² that in lending money an *ādhi* and surety are the two sources that inspire confidence (in the creditor that his money will be safe) and a document and witnesses are the two modes of proof that will establish (the existence of a debt). An *ādhi* is so called because the creditor is authorised to wield power over it or it is placed within his power (Nār. IV. 124 and Mit. on Yāj. II. 58)⁷⁰³. The

700. Compare Viṣṇu Dh. S. VI. 4 with the first proposition. Pāṇini (IV. 4. 21) derives *yācitaka* (in the sense 'yācitena nirvṛttam'). In *Saundaranāṭya v. Shiebasura* 31 Bom. 354 Mr. Justice Chandavarkar translates (at p. 361) Nār. IV. 108 and Kāt. (502-504), discusses the explanations of these passages by the Mit. on Yāj. II. 38 and holds that these incidents are even now applicable to contracts of debts by Hindu debtors and that neither the Interest Act (XXXII of 1839) nor the Indian Contract Act affects the ancient Hindu Law. It should be noted that 31 Mad. 250 and 33 Mad. 349 at p. 379 dissent from this view.

701. For an illuminating discussion on pledges, vide Dr. Sen's 'Hindu Jurisprudence' chap. VI. pp. 176-206.

702. विश्वम्भदेव द्वापत्र मन्त्रपुराणेषु च । लिखितं साक्षिपत्रं द्वे दमने स्थाप्यकारके न नारदः IV. 117.

703. आधिर्नाम द्यूतीत्ययं द्रव्यस्योपरि विश्वात्मार्थमपमर्णेनोत्तममोऽधिक्रियते आधीयत इत्यभिः । यथाह नारदः—अधिक्रियत इत्यभिः इति । सिता. on Yāj. II. 58.

word *ādhi* occurs in Āp. Dh. S. I. 6, 18, 20⁷⁰⁴ (which includes among those who are unfit to be invited at a *śrāddha* 'one who subsists on *ādhi*'). Gaut. XII. 29 also refers to *ādhi*. Kaut. (III. 12) briefly deals with *ādhi* and after stating some rules extends the principles of *upamādi* (deposit) and debt to it. Manu VIII. 165 employs the word '*adhamana*' in the sense of 'mortgage'. According to Br.⁷⁰⁵ (S. B. E. vol. 33 p. 323 verse 17) an *ādhi* is of four kinds viz. of movable property, of immovable property, *gopya* (to be kept in custody of the pledgee only), *bhopya* (to be enjoyed). Nār. IV. 124 first divides *ādhi* into two sorts, viz. one that is to be redeemed within a certain time fixed (by agreement at the time of contracting the debt) or to be retained till the debt is paid off and Nār. IV. 125 again subdivides each of these two into *gopya* and *bhopya*. This latter division was known to Gaut. XII. 32, Manu VIII. 143, Yāj. II. 59, Kāt. (576). The subdivisions of *ādhi* are made from several points of view viz. the nature of the property, the form of the pledge, the mention or non-mention of a period and the evidence to establish it. The Mit. on Yāj. II. 58 explains⁷⁰⁶ that the first kind of *ādhi* mentioned in Nār. IV. 124 contains the conditions that the money will be repaid at a fixed time and that if the money be not so paid at the time fixed the thing pledged or mortgaged will belong to the creditor. Yāj. II. 58 sets out three provisions viz. (1) when a time is fixed for payment, the thing pledged or mortgaged is lost to the debtor if the time fixed is allowed to pass without there being any repayment (whether it be an *ādhi* that is to be merely kept or whether it is one to be enjoyed); (2) but if no time be fixed the thing given as security is not lost

704. ये च श्रद्धमात्रीयन्ति । ये चाधिः । भिवद्ध । वार्षिकः । आप. ध. सू. I. 6.18. 19-22. हरदत्त explains *आधि* here 'as rent of a house,' because *वार्षिक* occurs a little later. But that sense is very rare and besides hardly any *smṛtikāra* has condemned the letting out of one's house for rent. It is better to take *ādhi* as pledge or mortgage and hold that *vārdhusika* refers only to those who lend corn in order to take 1½ times as much (or more) after the rainy season as defined by Nār. IV. 110 quoted above (on p. 417).

705. आधिर्बन्धः समारुपातः स च मोक्षश्चतुर्विधः । जङ्गमः स्थावरश्चैव मोक्षो भोग्य-
स्तथैव च । वृत्त. प. by स्वप्न. नि. p. 233, स्व. म. p. 171; अधिर्बन्ध इत्यधिः स
चिज्ञेयो द्विजगणः । कृतकालेऽप्येवञ्च पावद्देवोद्यतस्तथा । स पुनर्द्विविधः मोक्षो मोक्षो
भोग्यस्तथैव च । नारद IV. 124-25.

706. कृते काले आधानकाले एवाहुस्मिन्काले दीपारत्नवादी मयायमाधिमोक्षयोऽन्वयात्
तत्रैवाधिमोक्ष्यतीति । एवं निश्चिते काले उपभोगः आत्मसमीर्षं नेतव्यो मोक्षनोऽप्युपार्थः ।
देवं धामं त्रेपममतिक्रम्य पावद्देवमुद्यतो निषतः स्थापितः इत्यर्थः । पावद्देवमुद्यतो
पावद्देवोद्यतः सुशीतधनमप्यप्यवाधिरानेकापितकाल इत्यर्थः । मिता on वा. II. 58.

to the debtor at all, when it is an *ādhi* that is to be enjoyed; (3) if no time is fixed and the *ādhi* is only to be kept (*gopya*) then it is lost to the debtor only if it is not redeemed even when the debt has grown to double of the principal by non-payment of the interest agreed upon. There is a period of fourteen days' grace after this, as stated by Br. (S. B. E.⁷⁰⁷ vol. 33 p. 324, verses 27-28) that when the principal has been doubled or the stipulated period in the case of a pledge delivered for a certain time only has expired, the creditor becomes the owner of the pledge, after waiting for a fortnight during which the debtor may repay the debt and redeem his property. Gaut. XII 29, Manu VIII 143, Yaj. II 58, Visnu Dh. S. VI 5 provide that an *ādhi* which is mortgaged with the condition that the fruit or profits are to be enjoyed bears no interest nor can the creditor, even after keeping such an *ādhi* for a long time, make a gift of it or sell it. Medhātithi on Manu VII 143 holds that a mortgagee with possession who is to enjoy the produce cannot, by virtue of the last quarter of Manu VIII 143, make a sub-mortgage (called *anvādhi*). Kullūka on⁷⁰⁸ the other hand says that it is common practice in all countries for a mortgagee to execute a sub-mortgage of land and the like and that Manu VIII 143 does not forbid it. Prajāpati⁷⁰⁹ (q. by Par. M. III p. 242) defines a deed of sub-mortgage: 'if the creditor pledges to another the thing already pledged to him for the same amount (for which it was pledged to him) he should pass a fresh deed of pledge (or mortgage) and should hand over the former deed to his own creditor.' It appears that sub-mortgages came to be recognized rather late. Bharadvāja states that if a sub-mortgage be effected without the mortgagor's consent, the mortgagee would lose his money.

707. द्विरप्ये द्विगुणीयते पूर्वे काले कृतावधेः । बन्धकरप धनी स्वामी हिंससाहं महीष च । तद्वत्तरा धने दृष्टा अणो बन्धमपाप्नुवात् । सुह. q. by मिता. on वा. II. 58. Compare the description of mortgage by conditional sale in sec. 58 (c) of the Transfer of Property Act (of 1882).

708. अत इह निसर्गोऽन्यथापार्थं विक्रयसाधनार्थात् । सद्रूपो हि तो केनचित्पुंजेन । मेधा- on मनु. VIII. 143: मेधातिथिर्मेन्द्राजी तु आर्षेभिरकालेऽन्यथानेपि न निसर्गो नात्मन बन्धकेनार्पणमिति स्वाच्छाले । अथ तु सर्वदेभ्योपशिक्षाचारविरोधः, बन्धकहित-भूम्पादेरन्वयाधीक्षणसमाचारात् । कुल्लूक on मनु. VIII. 143.

709. धनी धनेन तेनैव परमाधि नयेद्यदि । कृत्वा तदापि लिखितं पूर्वं चारुप सम-पेक्षत् ॥ प्रमापति q. by स्वतिस्र. II, 143, परा. म. III. 242, म. म. p. 26; 'अयं चान्वाधिर्धनस्य द्वैगुण्ये सति संप्रतिपत्तौ तु द्वैगुण्यद्वयार्थेपि ब्रह्मणः' परा. म. III. p. 242; स्वामिना चान्वद्विज्ञात आपेराधि करोति चेत् । स्वधनात्त तु हीनः स्वात्कारोपापदि पूर्ववत् ॥ मर्यादा in म. वि. pp. 234-235.

The general rule was that an *ādhi* (whether of movable or immovable property) that was *bhogya* carried no interest but the profits were to be taken in lieu of interest (vide Kā. 516)⁷¹⁰ and the debtor would in this case get back his property on paying the principal. Kaut. (III 12) states⁷¹¹ that immovable property mortgaged may be such that it can be enjoyed only by expending labour over it or without expending one's own labour the creditor may enjoy the fruits or income thereof. But as noted by Vyāsa and Bharadvāja⁷¹² the stipulation about a *bhogya ādhi* may be that the income from the property is to be taken as in payment of the whole interest and part of the principal. This latter is called *sapratyaya-bhogyādhi* and the other variety where the income is taken in lieu of interest only is called *apratyaya-bhogyādhi*. The Mīt. on Yāj. II. 64 after citing a text of Brhaspati refers to these two varieties (though it does not use these terms) and adds that if the income is not sufficient to meet the interest wholly then the debtor may have to pay the principal and the unpaid part of the debt before redeeming his property. The Mīt. (on Yāj. II. 64) states that the appropriate name 'ksayādhi' is given by the people to what is called (above) as *sapratyaya-bhogyādhi*. Bharadvāja states that on taking an account (where there is an agreement to apply the income towards interest and reduction of the principal) if the creditor has been overpaid he is to restore the overpaid amount to the debtor and that if a portion of the principal remains unpaid the debtor has to repay it.

If a man first mortgaged his property and then sold it, the purchaser took it subject to the rights of the mortgagee (Vasistha quoted by Sm. C. II. p. 145). If a person executed a mortgage, a sale and a gift of the same thing on the same day, then the

710. इत्थं गृहीत्वा वृद्धवर्षं भोगयोगं दद्याति चेत् । जङ्गमं स्थावरं वापि भोगयाधिः स तु कल्पते ॥ मूलं तद्वर्षितं दत्त्वा स्वप्नेष्टादिकमाप्नुयात् ॥ कात्या. 516 q. by अथ. नि. p. 242, स. नि. p. 234, which says that this is अग्रवचनभोग्याधिः.

711. स्थावरस्तु प्रपातभोग्यः कलभोग्यो वा । कौटिल्य III. 12.

712. अत्र भोग्यो द्विविधः सप्रत्ययभोग्याधिः अप्रत्ययभोग्याधिरिति । सवृद्धिक-मूलापाकरणार्थं वा स सप्रत्ययभोग्याधिरित्युच्यते । वृद्धिमात्राकरणार्थं वा सोऽप्रत्ययभोग्याधिरित्युच्यते । तत्र सप्रत्ययभोग्याधिमहत्त्वात् । काचित्पुनरिति समाभाष्य दत्तमादाय तत्रातः । मत्स्येनैव मूलं वृद्धवर्षमधिकं मूलनाशनम् । इत्थाधिः प्रत्ययधिः स्वाह्वैरुच्ये निष्कायो भवेत् । ... अत्र भरद्वाजः । ... यत्तु तत्राधिकं वृद्धेर्देवं कृण्विने द्या । शीनं पावतु तद्वृद्धे तत्राह्वैरुच्ये ॥ स. नि. pp. 233-234 ; vide अथ. नि. pp. 242-243 from which S. V. appears to have borrowed.

donee would take one-third of the thing and the mortgagee and purchaser would share the remaining two-thirds in proportion to the money paid by each⁷¹³. If a person was liable to pay several debts, some secured by a pledge or mortgage and some taken on personal security, the latter were to be paid first and redemption of the mortgage was to be ordered afterwards, according to Bharadvāja (q. by Vy. Nir. p. 245).

The restriction that more money should not be taken from the sub-mortgagee than what was advanced to the mortgagor was for the benefit of the latter. The Par. M. (III. p. 242) provides that a sub-mortgage can be made only when the amount due has risen to double the principal, but that if the owner consents a sub-mortgage may be made even before that contingency arises.

Kāt. (522) requires that an adhi becomes valid when such particulars as the boundaries of the field or house and the village (in which it is situated) are specified⁷¹⁴. Kāt. (518) further provides that a writing of pledge or sale or gift is superior to a similar transaction made in the presence of witnesses only. If the same field or other thing is mortgaged or pledged to two persons separately, Viṣṇu Dh. S. V. 185⁷¹⁵ and Br. (S. B. E. 33 p. 326 verse 34) prescribe⁷¹⁶ that the one who got possession first (without force) is entitled to preference. This shows that under ancient Hindu Law possession was nine points of law and that hypothecation without delivery of possession was known to Kāt. and other smṛti writers, even if earlier smṛtis did not recognise an hypothecation without possession. Yāj. II. 60 and Nār. IV. 139 emphatically assert that a pledge or mortgage becomes perfect or effective only if there

713. वं पूर्ववर्तमाधाय विक्रीणाति तु तं पुनः । किमेतयोर्द्वीपः स्यात्प्राक्तनं पतन-
क्षम् ॥ कुतः पूर्वकद्विपसे दावाधमनविक्रयम् । अवाणामिति तन्पदे कथं तत्र विचिन्तयेत् ।
अथोपि तद्वनं धर्मे विमलेषुर्धर्माशयः । उभौ क्रियाभुसारेण विभागेन वसिष्ठः ॥ इति । वसिष्ठ
q. by स्मृतिच. II. p. 145, स. वि. p. 238-239; Br. quoted by both has
similar verses.

714. मर्पादाचक्षितं क्षेत्रं गृहं वापि यदा भवेत् । ग्रामादप्यथ तिरुपन्ते तदा सिद्धिम-
वाप्नुयात् । कात्या. q. by स. वि. p. 236. Compare sections 21 and 23 of the Indian
Registration Act.

715. यथोपनिषित आधिरतो विवदेतां यदा नरी । परस्य मुक्तिः फलं तस्य भग्नकारे
विना कृता ॥ विष्णुधर्मसूत्र V. 185; परा. मा. III. 233 reads जयं for फलम्.

716. क्षेत्रमेतं द्वयोर्धन्ये गृहं समकालिकम् । येन मुक्तं भवेत्पूर्वं तस्य तत्सिद्धिमाप्नु-
यात् । बृह. q. by परा. मा. III. p. 233, स्मृतिच. II. p. 144; vide a similar verse of
वसिष्ठ quoted in स्प. म. p. 173.

is enjoyment and not otherwise. This is to be taken along with Yāj. II. 23 and so the first in time shall prevail only if the first is accompanied with possession. If a sale or mortgage be made before witnesses to one man and in writing to another, the latter prevails over the former⁷¹⁷. If a debtor were to pledge or mortgage the same thing to another after pledging it to one and without redeeming the first debt, Viṣṇu Dh. S. (V. 181-182) prescribed⁷¹⁸ the drastic measure of corporal punishment (whipping or imprisonment) if the land mortgaged was a *gocurna* or more in extent or a fine of 16 *sauvarṇas* if it was less. Kat. (517) in similar circumstances made the debtor liable to the fine imposed on a thief. Kat. (519-521 q. in Sm. C. II pp. 144-145 and V. P. pp. 240-241) states that in a competition between a document of pledge which does not give particulars of the thing pledged or which refers to a thing not existing at the time and a document in which the thing pledged is described with particulars or in which the thing existed at the time the deed was executed, the latter is entitled to preference; similarly the pledge of a thing specifically described is superior to a prior pledge of all the debtor's property mentioned in general terms.

If an *ādha* deteriorates⁷¹⁹ in value (i. e. becomes inadequate to meet principal and interest) or if it be lost or destroyed though proper care be taken thereof by the creditor, then the debtor must either pledge another adequate thing (in substitution) or the debtor should return the amount due (Yāj. II. 60, Kat. 524). The Mīl. on Yāj. II. 60 remarks that it follows from this that it is the duty of the pledgee to take proper care of the thing pledged. Br. (S. B. E. 33 p. 323 verse 19) expressly says

717. आपानं विक्रये दाने लेखपतावपहृतं यदा । एकक्रियाविधौ तु लेखं तत्राप-
हारकम् ॥ कात्या. (518) q. by परा. न्या. III. 235; स्मृतिच. II. p. 144. म. नि. p. 237-
Compare Kat. 518 with sec. 48 of the Registration Act which provides that
a document relating to movable or immovable property shall prevail over an
oral agreement or declaration unless the latter is accompanied or followed
by delivery of possession.

718. बोधर्ममात्राधिकां भुवमन्वसपाधीकृतां तस्माद्वनिर्मोचयाम्यस्य यः मयच्छेत्त
यस्यः । ऊर्लो चेत्त बोधमात्रवर्णात् दण्डः । विष्णु. V. 181-182. बोधर्म is variously defined:
समास्तेन दण्डेन विनाशव्या निवर्तनम् । दणं वाच्येय बोधर्मं दण्डा स्वर्गे न्नीयते ॥ बृहस्पति-
स्मृति ॥ q. by मिता. on वा. I. 210 and अपराकं p. 367; विष्णु. V. 183 एकोऽस्तीयाह
यकुलस्य नः सेवतरे कलम् । बोधर्ममात्रा सा क्षीणी स्तोका वा पद्वि वा बहुः ॥ Vide also
पराशर XII. 49. बृहणीतन p. 539, अपराकं p. 1225 for other definitions.

719. आधीकृतं तु पक्षिचिद्रिमर्हं देवराजः । तदर्थं सोऽयं दाप्यो धनिनामधर्मजिकः ॥
न चेद्भूमिकदोषेण निपतेह्य म्रियेत वा । आधिमन्त्रं स दाप्यो स्वाहापायुच्येत नृपिकः ॥
कात्या 523, 524 q. by स्मृतिच. II. pp. 137, 138, नि. र. p. 26-27.

that the pledge has to be kept carefully like a deposit, as otherwise interest is forfeited in case of its being damaged. If a pledge which is to be kept only is enjoyed by the creditor, then the interest stops and if it deteriorates or is lost the creditor has to restore it to its former condition or substitute another of equal value; if a pledge to be enjoyed is lost or deteriorates by use then also the interest stops; and the creditor has to restore it, otherwise he will lose his principal (Yāj. II. 59 and the *Mit.* thereon, Nār. IV. 125, 127). If a pledge is lost without any fault or negligence of the creditor, but through fate (i. e. accidents like fire or flood) or the action of the king, the debtor has to furnish another pledge or to pay the amount due (Kat. 523, Nār. IV. 126, 130, Yāj. II. 59, Visṇu Dh. 8. VI 6, Gaut. XII 39, Br., S. B. E. 33 p. 323 verse 31). From the time of Gautama⁷²⁰ (about 500 B. C.) onwards the rule about the care required of a pledgee, bailee, depositee was the same viz. that he is to take of another's property kept with him as much care as he would take of his own. Nār. (*nikṣepa* 14) and Yāj. II. 67 lay down the same rule for all kinds of bailments. Manu VIII 189 (= Nār., *nikṣepa*, verse 12) illustrates what is meant by accidental loss.

The debtor cannot redeem the pledge or mortgage before the time fixed by mutual agreement, but by mutual agreement he can redeem even before (Br. S. B. E. p. 325 verses 32-33). If the creditor does not allow redemption when the debtor has a right to redeem and is ready to do so, the creditor may be liable to be fined as a thief (Yāj. II. 62). Acc. to Kaut. (III. 12) the fine is 12 *papas*⁷²¹.

It has already been stated above (p. 429) that in certain cases (i. e. when it is a *gopya ādha*) the ownership is lost to the mortgagor (i. e. in the language of modern law there is a foreclosure), if the amount has risen to double of the money lent without payment (even after the period of grace) or if the period fixed has passed away without there being repayment (whether the

720. निष्पन्नाधिपक्षितावकीताधयो नत्ताः सर्वाननिन्दितानुत्तुषापराधेन । शौ. XII. 39, on which हरद्वज says: गुरुवापराधस्तु यदि धारयितारः स्वद्रव्यवत् स्वपेक्षुः, यद्य-
त्रिभयादी स्वद्रव्यं गृहीत्वा निष्पाद्येतेत्येव स्वद्रव्ये वा दुर्गं निजान् बहिर्निष्पादि स्थापयेत् ।
एतस्मिन्गुरुवापराधे सति द्युधरेत् । वैवराजोपधातेन यदि तन्नाशमाप्नुयत् । गृहीतुद्रव्यसहितं
तत्र दोषो न विद्यते ॥ बृह. १ by स्मृतिक. II. p. 179. यत्र स. p. 192: अराजद्विकेनापि
निक्षिप्तं यत्र नाशितम् । गृहीतुः सह भाण्डेन दातुर्गर्ह्यं तदुच्यते । कात्या. १. by स्मृतिक.
II. p. 179. Compare sections 151 and 152 of the Indian Contract Act, where
the same propositions about the care to be taken by the bailee are laid down.
721. उपरिभूतस्याधिमपच्यतो द्वादशपणो दण्डः । अपेक्षा III. 12.

amount has risen to double of that lent or not, acc. to Mit. on Yaj. II 58). But if at the time of contracting the debt the stipulation is to repay the sum lent with interest and there is no stipulation about loss of the ownership of the thing mortgaged (i.e. it is like a simple mortgage of modern times), then there is no loss of ownership. There is then only a power of sale in the mortgagee. So also in the case of a *bhogyādhi* the mortgagor or his heirs can redeem the property at any time by paying the principal and there is no loss of ownership to the mortgagor. According to Yaj. II 63 and Br.⁷²² (S. B. E. vol. 33 p. 325 verse 29) the creditor can sell in the presence of (the debtor's relatives) and witnesses the *ādhi*, when the amount has grown to double of that lent or when the period fixed has passed, if the debtor has not redeemed and is absent or dead. After meeting his own dues the creditor has, as said by Kat. 529, to hand over the balance of the sale price to the king (i.e. probably to the court of the locality). Kaut.⁷²³ (III. 12) provides that if the debtor is present and the creditor is afraid of the loss of his money because it may exceed the market value of the *ādhi* he may sell it with the permission of the judges (*dharmaṁtha*) or he may demand a surety for assurance. It appears from these passages that a sale through court and a right of private sale were both recognised in the case of mortgages in ancient India (as in modern times under sections 65 and 69 of the Transfer of Property Act).

There were two other special kinds of *ādhi* described in Yaj. II 61 viz. *caribrahmaṇḍalaka*⁷²⁴ and *satyakhāra*. The first

722. विरुधं द्विगुणीकृतं दत्तं नष्टोऽयमिति । इदं नदीयं संघातं विक्रीणीत ससाक्षिकम् । वृत्त. q. by १७. m. p. 174, परा. मा. III. p. 240 which remarks 'आधीकृतं इदं ससाक्षिकं विक्रीय कृणानुत्तरं द्विगुणीकृतद्वयपर्यन्तं एहीत ततोऽपि नष्टं वर्जयेत् । राजे समर्थेद्विरुधः, विना धारणकादापि विक्रीणीत ससाक्षिकम् । वा. II. 63, धारणकादु-धमर्णाद्विना । मिता.

723. धारणकसक्षिधामे वा विनाशमवाकुर्वतां धर्मभाद्वशात् विक्रीणीत । आधिपाल-कायपो वा । अर्थशास्त्र III. 12. Acc. to the Sm. C. II, 130 *ādhipālā* was a surety in case of *gopyādhi* (quoting पितृमह) : राजस्तस्य स विलपातो विक्रेय इति धारणा । सवृद्धिकं एहीत्यर्थं केचन राजन्यधारेणम् । धारणा. q. by अवरार्क p. 638, परा. मा. III. p. 241. स. वि. p. 243, निषादचन्द्र p. 9. तदा तु न सकुरुषः स्वर्गं च सत्यनिश्चयधारेणम् । तदा वृथाह द्विजातिपत्येन सत्यधारेण निक्षिपेत् । नारद IV. 113; तथा च संघतकारः । ... शुभादिनाशप्रणान्तानां रिक्त्वभावात्समेते । पञ्चाशत् पलाशेन जुहुयान्नरूपमेव तु । पञ्चसीध-मिति सार्वेदधारात्वेन तद्वनम् । स्मृतिच. II. p. 177.

724. चरित्रचरककृतं सवृद्धया वापयेद्भनम् । सत्यकारकृतं इदं द्विगुणं नतिपाद-येत् । वा. II. 61; on सार्वकारकृतं the मिता. says: सत्यस्य कारः सत्यकार-कारे सत्यागदस्य इति सूत्रं । सत्यकारेण कृतं सार्वकारकृतम्. Two meanings are given of चरित्रचरककृतं and सार्वकारकृतं. 'कारे सत्यागदस्य' is पाणिनि VI. 3. 70.

occurs either when the creditor being known to be very honest the debtor gives as security a property of very great value for a small debt or where a debtor being known to be very honest a property of very small value is accepted as security for a large debt. In such a case there is no forfeiture or foreclosure of the property in any case but the king (or judge) should award only double the principal lent. Another meaning is that in a *caritrabandhaka* it is the merit (*apūra* or *punya*) arising from bathing in the Ganges or from performance of *agnihotra* that is given as security (i. e. he will forfeit merit on non-payment). In this case the creditor will receive double and there is no loss or forfeiture of *ādhi*. A pledge made with *satyankāra* occurs when at the time of making a pledge the stipulation is 'I am liable to pay only double but there will be no loss of the thing pledged' or (a second meaning of) *satyankāra* is that 'when an earnest (a ring or the like) is given at the time of a sale and the vendor breaks the promise he has to pay double of the earnest'.

If the mortgagee is dead or absent abroad, and the debtor wants to redeem he may take back the *ādhi* after paying the amount due to the family i. e. to his sons and other agnatic relations or to his cognates and in the absence of these (if the creditor be a *brāhmaṇa*) to other *brāhmanas* (and if no *brāhmanas* be available) he may cast the money into water (Yāj. II. 62 and Nār. IV. 112-113). The *Kauśika-sūtra*⁷²⁵ (46. 36-40) contains provisions about casting the debt in the cemetery or where four roads meet if the creditor is dead and there are no heirs. The *Saṅgraha* says that it may be thrown into water with a *palśa* leaf to the accompaniment of Tai. S. III. 3. 4. 1-2 quoted above (n. 671). Another alternative is that the debtor may have a valuation of the *ādhi* made at the time when he wants to redeem (and the creditor is absent), and allow it to remain with the creditor but without interest (and redeem it at the valuation when the creditor comes or secure the price from the creditor if the *ādhi* be afterwards lost or destroyed, acc. to Mlt. on Yāj. II. 63).

Pratibhū. A *pratibhū* or *lagṇaka* (Br. quoted in n. 681 and Kāt. 530) means 'surety'. *Pratibhārya* (being a surety) was known to Gautama (XII. 38) and *pratibhū* was known to Pāṇini

725. उत्तमर्णे दूते तदपवाप यजच्छति । समोवाप । इमंवापे निवपति । चतुर्थे च । कर्त्तव्यदीपयति । कौशिकसूत्र 46. 36-40.

(II. 3. 39). Suretyship requires the concurrence of three persons viz. the creditor, the borrower (called the principal debtor) and the person who agrees, for inspiring confidence in the creditor⁷²⁶, to pay or indemnify if the principal debtor commits default. Manu VIII. 160 speaks of surety for appearance and for repayment of debt. According to the purpose of the transaction a surety is of three kinds (Yāj. II. 53 = Visnu Dh. S. VI. 41 and Nār. IV. 118) viz. for appearance, for payment and for honesty. The first undertakes to produce a person before a court and assures the court that the person concerned will not abscond from the country; the surety for payment agrees that in case the debtor does not pay the principal and interest, he will himself pay both; the surety for honesty assures the employer or other person with whom another man deals that the latter is an honest and good man, that he would not deceive and that reliance may be placed on him (vide Mit. on Yāj. II. 53 and Sm. C. II. p. 148 for these explanations). Br. (S. B. E.⁷²⁷ vol. 33 p. 327 verses 39-40) speaks of four (including the three of Yāj. II. 53), his fourth being one who promises to deliver or restore the assets that are with the debtor (such as household furniture or ornaments). Yāj. and Nār. must be deemed to include this last under the surety for payment. Kat. (530)⁷²⁸ says that a surety (*lagṇaka*) may be caused to be given for repayment (of a debt), for appearance (*upasthāna*), in lawsuits, for honesty and for taking oaths (or ordeals). Acc. to Hārita a surety is taken for five purposes viz. for keeping the peace (*abhaya*),

726. यतिनामार्थं नाम निश्चयार्थं ब्रह्मन्तरेण सह समयः । मिता. on य. II. 53, स्व. ५. p. 247.

727. दृष्टेने परपरे दाने जग्निद्वयार्पणं तथा । चतुष्कारः पतिषुः शाले इष्टो मनी-
षिभिः ॥ अहोको दर्शयामीति साधुरित्यपरोक्षीव । दानादनेनैतद्द्विणमपेयामीति चापरः ॥
बृह. q. by अपराहं p. 655, स्मृतिच. II. p. 148 and स्व. ५. p. 247.

728. दानोपस्थाननिश्चयनिश्चयद्वयार्पणं च । तद्वत् दायपदेन यथायोगं विपर्यये ॥
जाय. 530 q. by अपराहं p. 655, परा. मा. III. 242, स. वि. p. 247. When a
special oath or ordeal was to be taken or undergone at some future date, a
surety was taken from the party. A surety was also to be taken from both parties
in a litigation (Yāj. II. 10). अमरे कपये दाने उपस्थाने पदार्थे । पञ्चसेन पकरेडु
बाळो हि अनिचुर्ध्वे ॥ शरीत q. by स्मृतिच. II. 148 and स्व. ५. p. 248: 'उपस्थानमत्र
पञ्चद्वयार्पणमभिमतं न दर्शनम्, तस्य स्वपदेनैवोपायनात्, पञ्चस्तिरुपस्थापदनात् । स्मृतिच.
All the above kinds of sureties are taken in modern civil and criminal pro-
ceedings. Vide sec 145 of the Civil Pro. Code (for sureties for the perfor-
mance of a decretal order or repayment of money ordered by a Court to be
paid, for restitution of property taken in execution), sec. 55 (4), Order 25
rule 1, Order 38 r. 5, Order 41 rules 5 and 10 of the Civil Pro. Code and
Cr. Pro. Code, chap. VIII, sec. 426, 499 &c. in criminal matters.

for honesty, for repayment of debt, for delivering the debtor's property to the creditor, for appearance. V. P. p. 248 quotes Vyāsa (who mentions seven kinds of sureties) and remarks that all can ultimately be reduced to three varieties.

If the surety for appearance cannot produce the person at the time and place agreed upon, he should in that case pay to the creditor what he has bound himself to pay except where the debtor is prevented from appearing by act of God or of the king. But a period of a fortnight, a month or three fortnights at the most should be allowed to the surety to find out the absconding person⁷²⁹. If he can produce him within that time the surety would be free from liability (Kat. 531, 532, Br. in S. B. E. vol. 33 p. 327 verse 42). If the surety for appearance cannot (even after time is given) produce the debtor or the debtor dies then the surety has to pay from his own pocket the money due from the debtor (Manu VIII. 158 and Kat. 532-33). All this is subject to the proviso of the act of God or of the king.

Sureties of all kinds are personally liable to make good the loss arising from the non-appearance of the debtor, or from his dishonesty or non-payment (Yaj. II. 53, Vāru VI. 41, Br. in S. B. E. 33 p. 327 v. 41); but the sons of the surety for appearance or honesty were not liable, if the surety died⁷³⁰. Yet if the surety for appearance or honesty stood surety only after taking some security from the debtor for so doing, then even the son would be liable to reimburse from such security the person losing. The liability of sons and grandsons for the suretyship debt of the father or grandfather will be discussed a little later on. If there are several sureties, then each will have to pay a proportionate part of the debt; but if each of the sureties has undertaken the whole liability of the debtor (i. e. if the liability of all is joint and several) then the creditor may at his will recover the whole debt from any one of the several sureties

729. नष्टस्यान्वेषणे कालं दद्यात्पत्तिद्वये धनी । देहाशुक्लपतः पक्षे मासं सार्धमथापि वा ॥ बृह. । नष्टस्यान्वेषणार्थं तु द्वेयं पक्षत्रयं परम् । पक्षसी दूर्ध्वैस्तत्र मोक्षकपः पत्तिद्वयेनेत् । काले प्रतीतिं प्रतिपूर्णेति तं तैव दूर्ध्वेनेत् । स समर्थे प्रदाप्यः स्वात्पते त्रैयं विधिः स्मृतः ॥ कारत्वा, both q. by स्मृतिच. II. p. 149, स्प. य. p. 249, मित्ता on वा. II. 57.

730. आद्यौ तु वितथे द्वाप्यौ तत्कालावधिर्न धनम् । उत्तरी तु विमेषादे तौ विना तन्वृत्तौ तथा ॥ बृह. q. by स्मृतिच. II. p. 150, स्प. य. p. 250; सुदीप्ता चम्पकं यत्र दूर्ध्वैर्द्वयं स्थितौ भवेत् । विना पित्रा धनमस्मादाप्यः स्वात्पदार्थं स्मृतः ॥ कारत्वा. 334 q. by मित्ता on वा. II. 54, अपराकं p. 656, स्प. य. p. 251.

(Yaj. II 55, Nār. IV. 120). Kāt. 538 states⁷³¹ a special rule that whichever out of several sureties that have incurred joint and several liability is found present at the place (of the agreement) should be made to pay the debt; if such a surety has gone abroad his son may be made to pay the whole, but if the surety be dead the son should be made to pay only the share of his father (there being several sureties). If a surety being pressed or harassed by a creditor pays openly (before all people) the debt (wholly or in part)⁷³² then the debtor will be made to pay after three fortnights double of what the surety has to pay (Yaj. II 56, Nār. IV. 121, Viṣṇu Dh. S. VI. 44, Kāt. 539). But if the surety pays without being pressed he would get only what he paid and if the debtor reimburses the surety without loss of time then he has not to pay double. These rules apply to money lent; but in the case of grain, clothes and liquids the debtor must pay to the surety three, four or eight times respectively (Yaj. II 57). Who could not be accepted as sureties has already been stated (on pp. 291-292).

Several were the modes of the recovery of debts. Manu (VIII. 47-48) requires the king to make the debtor repay his debt to the creditor in whatever way he can do it. There is a difference in the modes of recovery according as the liability is admitted by the debtor or not. If liability is denied then the only method is to file a suit for the recovery of the debt. But if the liability is admitted by the debtor, then Manu VIII. 49 (= Nār. IV. 122), and Br. (S. B. E. vol. 33 p. 329 v. 54) mention five means of recovery viz. *dharma* (persuasion), *vyavahāra* (legal proceeding), *chala* or *upadhi* (trick), *carita* (sitting down at his door), or *bala* (compulsion to do work or confinement). It appears from Āp. Dh. S. (I. 6. 19. 1) that the method of sitting at the door for recovery of debts was known to Āp. (the creditor so doing is designated *pratyuparista*). In a Marwad Inscription

731. बहवश्चेति सुतो द्युमुनेऽर्थं वधाकृतम् । अर्थेऽपि शिषिते सोऽपि धनिनश्चन्दतः क्षिप्य ।
नारद IV. 120, विष्णु VI. 42. एकच्छापापविष्टानां द्वावो वसतश्च दृश्यते । अपिपिते बन्धुनः
सर्वे पित्रंशे तु सुते समस्तः कात्या. 538, q. by मिता. on यज. II. 55, च. म. p. 251. एक-
च्छापापविष्ट or एकच्छापापविष्ट is a technical expression meaning the same as
'undertaking joint and several liability' and is explained by the मिता. as
'एकच्छापापमर्णस्य द्वाधा सादृश्यं तासांभिता एकच्छापापविष्टा अधमर्णो वधा कृतमद्वयदानाव
विपतस्तथा दाने नतिमुपेऽपि प्रवेक्षं कृतमद्वयदानाव स्थिताः'.

732. प्रतिभाष्ये च सो द्युवासीक्षितः प्रतिभाषितः । क्षिप्यताम्वरतः सोऽपि द्विगुणं लब्ध-
मर्थंति कात्या. 539, q. by अपराक्ष p. 637, परा. मा. III. p. 252, वि. र. p. 45, च. म.
p. 253 ascribes it to both कारपापन and द्युवरपति.

dated *senhant* 1198 (1141-42 A. D.) this practice is called *kāya-vrata* (*yadi brāhmaṇaḥ kāyavratam kṛtvā mṛigate*). Vide E. I. vol. XI p. 37 at p. 40. These modes of recovery except *vyavahāra* are explained by Bṛhaspati as follows: ⁷³¹ The method of *dharma* consists in sending messages (to the debtor) from his friends and relatives, in persuading him to pay with sweet words, by following the debtor (i.e. by persistent dunning) and by frequent requests. Trick consists in the creditor borrowing from the debtor some ornament or other article under the pretext of its being required in a festival and not returning it or in retaining what the debtor has handed over to the creditor for being delivered to another; that is compulsion when the debtor is brought to the creditor's house, is then confined or beaten and thus induced to repay the debt; that is *ācārata* where the creditor keeps tied his own wife or son or cattle at the debtor's house or sits down at his door (fasting). All these methods could not be employed in the case of all debtors. Kāt. (477-480) has already been cited (on p. 383) to show how the king is to employ the various methods in the case of brāhmanas, traders &c. If the creditor employs any one of the methods (other than *vyavahāra*) and harasses a debtor when the latter claims judicial investigation and there is a doubt or dispute between the two as to the amount, the rate of interest, the liability to pay, the creditor would lose his claim and would have to pay a fine equal (to the claim) ⁷³², Kāt. 589 and Br. ⁷³³ (S. B. E. vol. 33, p. 331 verses 63-65) lay this down. But when the debtor admits his liability and yet does not pay and when the creditor therefore employs one of the means (other than a suit) appropriate to the caste and position of the debtor, then, if the debtor complains to the king

733. यतिपञ्चमूर्धं दाप्यः सामादिभिश्चक्रेः । धर्मोपधिबलात्कारैश्च सरोपमेव च ।
सुहृत्सकान्धिसन्दिग्धैः सामाजिकपात्रपमेव च । मायेण वा कर्णो दाप्यो धर्म एव उदाहृतः ॥
उक्तान् वाचितं चाध्यात्मिकं कणिकादनी । अन्त्यादिनादि राक्षस दाप्यते तत्र सोपधिः ॥ यदा
स्वयुद्धमानीय तादृगाद्यैश्चक्रेः । कणिको दाप्यते यत्र बलात्कारः स कीर्तितः । दारपुत्रपुत्र
पुत्राश्च कुत्राप्यारोपदेशम् । यकर्णो दाप्यतेऽर्थे स्व तदाचरितमुच्यते ॥ बृह. q. by स्मृतिच.
II. p. 164, परा. मा. III. p. 255-256, कुम्भक on मनु. VIII. 49, य. य. pp. 256-257.

734. न रोक्ष्यः क्रियावादी सन्दिग्धोऽर्थे कथञ्चन । अनेपदेशनासेचदं दुष्टयो भवति
यमकः ॥ यदावर्णं यद्वचति स्वापत्तस्तद्दाप्यम् । एवं यचणिको भवे क्रियावादी स उच्यते ॥
कपलकपादिनामेव यत्र अग्निर्धर्ममेव । देवानादेवयोर्वापि सन्दिग्धोऽर्थः स कीर्तितः ॥ अना-
शेष इ राज्ञे यः सन्दिग्धोऽर्थे प्रवर्तते । यमकः स विनेयः स्वाप्तः चापद्यो न निश्चयः ॥ बृह. in
स्मृतिच. II. p. 166, य. य. pp. 259-260.

735. यद्विद्वेयो धनी काश्चिद्वणिक् स्वापसादिनम् । तस्माद्वर्णसं दीपितं तस्मै चाप्युपा-
हृतम् ॥ कात्या. 589, q. by मित्त. on वा. II. 40, अपराधे p. 645, य. य. p. 260.

against the creditor, the debtor would be compelled by the king to pay the debt and a fine for unnecessary complaint (Yaj. II 40, Manu VIII. 176, Viṣṇu Dh. S. VI 19). Kat. (580-584) provides that where⁷³⁶ it is the custom of the country, the creditor may hold the debtor in restraint openly before an assembly of people until he pays what is due, that when a man so restrained has an inclination to answer calls of nature, he should be followed behind by the creditor or he should be allowed to go alone but fettered, that he should be allowed to go home for his meals and at night if he furnishes a surety, and that the surety will have to remain in restraint (while the debtor is absent), that if the debtor cannot secure a surety or does not accept the proposal of furnishing one he should be confined in jail or should be kept guarded by men; but that a respectable man who is trust-worthy and pure in conduct should not be put in jail, that he should be allowed to go without fetters or after being bound by an oath. Manu VIII. 177, Yaj. II. 43, Nar. IV. 131 lay down that if a debtor is unable to pay a debt then he should be made to do work suitable to his caste in the house of his creditor of the same or higher caste in order to gradually liquidate the debt (but without detriment to his own family) and a brāhmaṇa debtor should be made to pay by easy instalments⁷³⁷. Kaut. III. 11 provides⁷³⁸ that agriculturists and king's servants should not be seized (for debts) at the time when it is the season for them to work, nor a woman for her husband's debt unless she has promised to repay her

736. धार्योक्तदण्डदण्डितः अकारो जनसंसदि । यावत्तु दण्डयेत् च देशाचारस्थिति-
र्गता ॥ विष्णुवक्त्रा यत् स्वाह धार्यमाणस्य देहिनः । पृथ्वी वायुमन्त्रयो निबद्धे वा समुत्त-
रेण ॥ स कृतमतिदुर्लभं मोक्षाय स्वाहिने दिने । आहारकाले यत्तु च निबन्धे यत्किञ्च सिध्यतः ॥
यो दण्डनगतिमुपै माप्तिमन्त्रेण चारयेत् । स चारके निरोद्धव्यः स्वाप्यो वाचेय
रक्षिणः ॥ स चारके निरोद्धव्य आर्तः आत्ययिकः क्षुब्धः । सोनिबद्धः यमोक्त्या निबद्ध-
ग्रपणेन वा ॥ कात्या. 380-384 q. by स्मृतिच. II. p. 163, वि. र. pp. 69-70,
स्य. य. pp. 257-258. वि. र. p. 67 says that the mode in the first verse is a
method of अपहार. In modern times a debtor who owes a decretal debt
can be kept in civil jail under Order 21 rules 37-40 of the Civil Pro-
cedure Code. In most European countries imprisonment for debts was abolished
only in the 2nd half of the 19th century. Even now in England under
certain circumstances a judgment debtor may be imprisoned for 42 days.
For चारके निरोद्धव्यः vide दण्डकुमारचरित I p. 36 'आ च दुष्टकन्या ... चारके
निरोद्धयेति'.

737. निर्धनमुणिकं कर्म सुहृदानीय कारयेत् । शौचिककायं ब्राह्मणस्तु दापनीयः शनैः
शनैः ॥ बृह. q. by वि. र. p. 71, स्य. य. p. 261.

738. अद्याद्याः कर्मकालेषु कर्मका राजपुरुषाश्च । की वापतिभ्रात्रिणी पतिकृतमुजमग्नय
गोपालाकार्येतिहेतवः । अर्थशास्त्र III. 11.

husband's debt, but wives of cowherds and those who take a lease of lands for half produce may be arrested for non-payment by the husband. As compared with the harsh legislation against debtors in most ancient and medieval systems of jurisprudence the rules laid down by the *smṛtis* are very mild and humane⁷³⁹. If there were several creditors there was priority among them i.e. the earlier debt prevailed over the later one; a *brāhmaṇa* creditor however (whatever the date of his advance) was preferred to a *kṣatriya* or other creditor (Yaj. II. 41, Kāt. 514). Kāt.⁷⁴⁰ states that the debts owed to the Crown and a *śrotriya* take precedence over other debts and that unless the debtor is going to abscond several creditors should not simultaneously proceed against one debtor. Section 56 of the Bombay Land Revenue Code makes Government assessment a paramount charge on the land. But acc. to Kāt. (513) if several debts were contracted in writing on the same date, they should all be treated as equal and paid off *pro rata* from the debtor's assets if insufficient; but, if a creditor established that a particular article belonging to a debtor was manufactured by the debtor with his money only, that creditor alone got the money recovered by sale of the article (Kāt. 515). *Bharadvāja* states⁷⁴¹ that if a debtor has no cash then the creditor should be paid by sale of the debtor's other property in order viz. grain, gold, iron, cattle, clothes, land, slaves, and conveyances, (in the absence of fields) his garden and lastly his house and in the absence of even a house time should be granted to debtors of the three higher castes.

739. Under the law of the Twelve Tables in Rome a creditor could put the debtor to death or sell him to a stranger beyond the Tiber or, if there were several creditors, they could divide the body of the debtor among themselves after the third market day (Table III in Ortolan's Roman Law p. 106). Vide Sen's 'Hindu Jurisprudence' pp. 316-17 for later Roman and Irish rules.

740. नागर्णसमवाये तु नैकं द्वौ युग्मयुग्मिव देयानामप्यत्र पतिव्रतानाम् । तत्रापि सुहीनः सुपूर्वः । राज्ञोऽपि देयं वा पूर्वं भविष्यदेत् । कौटिल्य III. 11. नागर्णसमवाये तु यथापूर्वकृतं भवेत् । तत्तदेवाग्रतो देये राज्ञः स्थाप्यो विषयः । कात्या. q. by स्मृतिच. II. p. 167, स. वि. p. 235.

741. कणिकरं धनमात्रे देययोग्यस्तु तत्कमान् । धान्ये हिरण्ये तोले वा सोमहिरण्य-दिक् तथा ॥ यच्छे सुदामयम् च वाहनादि यथाक्रमम् । पणिकरं तु विक्रीय प्रदेयमनु-पूर्वशः । श्रेयमात्रे तथारामस्तस्याग्रे सुहृदयः । द्विजातीनां सुहृदामि कालदाये विधीयते ॥ भरद्वाज q. by स्पृश. नि. p. 234, परा. मा. III. 259, व्यवहारसार p. 116. In view of this passage the remark of Mr. Golap Chandra Sarker in his 'Hindu Law' (7th ed. of 1933) p. 432 'Hindu Law nowhere contemplates a compulsory sale of immovable property in execution of decrees' seems hardly correct.

When a debtor was not able to return the entire debt in a lump, he should write on the back of the document of debt the sums paid by him from time to time or the creditor may pass a receipt (*upagata* or *pravekapatra*, as the Mit. designates it) to the debtor signed by himself (Yāj. II. 93, Nār. IV. 114, Viṣṇu Dh. S. VI. 26). If the creditor, though requested by the debtor, would not pass a receipt he was to lose the balance of his debt (Nār. IV. 114). Nār. IV. 115 and Br. (S. B. E. vol. 33 p. 332 verse 66) further provide that if the creditor does not write down (either on the bond itself or in a separate document) the money recovered by *dharma* or some other method then the debtor himself will be entitled to interest on the amount paid by him.^{741a} When the whole debt is paid off, the creditor should tear off the bond of debt or he may execute another document in order to show that the debtor is freed from the debt (if the original is lost or is not within easy reach) and when a debt is borrowed in the presence of witnesses, it should be returned in the presence of the same or other witnesses (Yāj. II. 94, Viṣṇu Dh. S. VI. 24-25). Nār. IV. 116 requires the creditor to return the document when the whole debt is paid off or to announce openly to others that it has been paid.⁷⁴²

It has now to be seen who (other the man himself) are liable to pay a man's debt. The liability to pay another's debt may arise on three grounds, (1) religious, (2) equitable and moral, (3) legal, such as agency (express or implied) or authority. That the sons and grandsons of the original debtor are liable to pay on religious grounds the debt of the father is expressly stated by numerous writers such as Kauṭ.⁷⁴³ III. 11, Yāj. II. 50, Nār. IV. 4, Br. (S. B. E. vol. 33 p. 328 verse 49), Kāt. (560), Vṛddha-Hārita VII. 250-51, Viṣṇu Dh. S. VI. 27.

741a. भर्मादिनोदघात धनं वस्तुपरि न लेखयेत् । न चैवोपगतं दद्यात्तस्य तदशुद्धिना-
च्छ्रयम् ॥ बृह. q. by नि. र. p. 80, ख. न. p. 277.

742. लेखे दद्याद्विमुक्त्यर्थे तदभावे न लिखयम् । धनिकार्जिकयोरेष विमुक्तिः स्वागपस्वरम् ॥
नारद IV. 116 असहाय explains 'न लिखयं विमुक्तिपत्रम्', while the स्मृतिक-
II. p. 162 and ख. प. p. 277 read न लिखयम् and explain 'यतिदानं कृतमिति
साक्षिभिः भाषणम्'.

743. जैवितविवाहधुमिपतिभाषणमसंख्यातदेशकालं तु पुत्राः पौत्रा वा बहोस्तुः । अर्थ-
शास्त्र III. 11: कर्मादुपगतं धनं पुत्रैर्वर्ज्यं मुह्यतम् । द्यूः पैतामहं पौत्रास्तच्छतुर्धनित-
तेते ॥ नारद IV. 4: अण्यमाग्नीपवतिवर्जं देवं पुत्रैर्विभावितम् । पैतामहं समं देवमदेयं
तन्मुतस्य तु ॥ बृह. q. by the मित्रा. on वा. II. 50: पुत्राभावे तु दातव्यमुप्यं पौत्रेण वक्षतः ।
अमुर्धनं न दातव्यं तस्माद्विनिवर्तेते ॥ कात्या. 560 q. स्मृतित्व. II. p. 171, परा. मा. III,
p. 264, वि. र. p. 49, ख. य. p. 264.

The important question is whether the *smṛtis* declare the liability of the great-grandson. It is clear that *smṛtis* like that of Br. expressly say that the great-grandson is not liable to pay his great-grandfather's debt. The *Viṣṇu Dh. S. VI. 28* says that the descendants beyond the grandson need not pay if they are unwilling to pay. Others like *Nār. IV. 4* and *Kāt.* say that the obligation to return a debt ceases from the fourth. The question is what is meant by the fourth i.e. is it meant to exclude, in calculating, the original debtor or to include him? It is possible to hold (particularly because the great-grandson is not expressly mentioned in most *smṛtis*) that the fourth means 'inclusive of the original debtor'. But this appears to be in conflict with the rule in *Manu IX. 137* (which is the same as *Baud. Dh. S. II. 9. 6*, *Vas. 17. 5*, *Viṣṇu Dh. S. 15. 46*) that the son, grandson, and great-grandson confer the greatest spiritual benefit on the ancestor, the rule (*Manu IX. 186*, *Nār. IV. 6*) that *pinḍas* (in *śrāddha*) are to be offered by three persons in descent and the general rule that whoever takes the inheritance must offer the *pinḍa* and pay the debts of the ancestor (*Gaut. XII. 37*, *Yaj. II. 51*, *Nār. IV. 23*, *Viṣṇu Dh. S. XV. 40* and *VI. 29*). Therefore, following the canons, viz. the rights to property are co-extensive with the liability to perform *śrāddha* and to pay off debts (which is quite logical and reasonable), that the texts relating to the same subject matter must be harmonized and reconciled as far as it is reasonably possible⁷⁴⁴ to do (*ekasādhyaḍānyāya*), that apparently conflicting texts are to be assigned their appropriate spheres (*viśaya-vyavasthā*), and that a direct conflict (and so an option) is to be presumed only if no other recourse is open, the *Mitākṣarā* and other commentators put forward the interpretation that the texts stating that the great-grandson is not liable to pay the great-grandfather's debt apply only to cases where the great-grandson inherits no ancestral property, but that he is liable if he takes ancestral property. Dr. Jolly in his note on *Nār. IV. 6* (in *S. B. E.* vol. 33 p. 44) remarks: "the doctrine, viz. the liability to pay debts contracted

744. This principle is stated by the *mita* on pa. 1. 4-5 as 'कुलेषां (सम्भा-
वीनां) परमेष्ठे प्रमाणवेदि साक्षाद्भाषामाकाङ्क्षापरिपूरणमन्यतः कियते विरोधे विकल्पः १।
नेपातिणि on मनु. XI. 216 puts it in the same way 'एकसाध्यात्परस्परसूतीनाममति
विरोधे समस्ये योजने विरोधे तु विकल्पः'. This view is based on *जैमिनि II. 1. 46*
अर्थकलादेर्न बाधय साक्षात् चेद्विधाने स्वात्. The word *एकसाध्या* occurs in *Vedān-
tasaṁhita III. 4. 24*. In *Yājñat v. Prāśad 39 Bom.* 173 at p. 372 this
principle has been judicially recognized.

by an ancestor extends to the great-grandson, is opposed to the teaching of such an eminent authority as *Vijñāneśvara*, who maintains in the *Mitākṣarā* that the great-grandson⁷⁴³ is not liable for debts contracted by his great-grandfather, and conversely that he does not inherit his property'. He makes similar remarks in his Tagore Law Lectures for 1885 (on 'adoption, partition' &c. p. 171). Dr. Jolly is under some misapprehension since the *Mit.* in two places deals with this matter and expressly states that the great-grandson is liable to pay debts contracted by his great-grandfather if he has taken ancestral estate but not otherwise. The following propositions are deducible from the *smṛti* texts and authoritative commentaries like the *Mit.* and the *Vīramitrodaya* (*Vyavahāraprakāśa*). The⁷⁴⁴ first proposition is that the debts of a man must be paid by his three descendants (son, grandson and great-grandson) if they have ancestral estate in their hands (*Mit.* on *Yāj.* II. 51 quoted in note 745, *Sm. C.* II. p. 171, *V. P.* p. 264). The 2nd proposition is that even when no ancestral estate was taken by the descendants the son was liable to pay his father's debts with interest, the grandson was liable to pay his grandfather's debt but without interest and the great-grandson was not liable to pay even the principal, if he was unwilling to pay. This proposition is enunciated by *Viṣṇu Dh. S.* VI. 27-28, *Br.* (S. B. E. vol. 33 p. 328

745. On *अनुप्राप्त्यर्थे* &c. of *दुवृत्त्यर्थे* referred to above the *mita* (on *पा.* II. 50) remarks, 'अने पावदुवृत्ते तावदेव देये न दुवृत्तिः । तत्कृतस्य प्रपौत्रस्य अदेय-मपुहतिधनस्य । एतच्चोपरिष्ठोक्तौ स्पष्टयिष्यते'. On the words *दुवृत्तीन्त्य* *स्तिविधनः* (on *पा.* II. 51) the *mita* explains: इत्येतदपि पुत्रपौत्रहीनस्य प्रपौत्रादप्ये यदि रिक्तं दृष्टमिति तदा अने दाप्याः मान्योपेयमर्थम् । पुत्रपौत्रौ च रिक्तग्रहणानायेपि दाप्या-नित्युक्तम् । Dr. Jolly probably misunderstood 'अपुहतिधनस्य' and held it to mean 'that a great-grandson does not take the ancestral estate', but it really means 'if he has not taken &c.'. The *स्मृतिच.* II. p. 171 says, 'एवं च पतितामहाविकृत्यार्थकरपानधिकारो चतुर्णांदैरपुहतिरिक्त्वर्थेन न पुनर्पुहतिरिक्त्वर्थेनैव-स्तस्यम् । ... पुहतिरिक्त्वर्थेन तु प्रपौत्रपानधिकारो दुवृत्तिमार्तकणायकरणे । देये पतितामहं समन्तिपरपुहतिरिक्त्वर्थेनैव'.

746. The first proposition is followed by modern decisions in British India. Vide *Lachman Das v. Khunnu* 19 All. 26 (P. B.) which holds that the mortgagee of a man who had mortgaged joint ancestral property can enforce his mortgage against the grandson of the mortgagor for the realization of interest as well as principal, *Ladu Narain v. Gobardhan* 4 Pains 478, *Masit Ullah v. Damodar Prasad* 48 All. 518 (P. C.) where the Privy Council held that the great-grandson is liable for the debts of his great-grandfather as much as he is liable for those of his father or grandfather. In all these cases passages from the *smṛtis* of *Yāj.*, *Nār.* and *Br.* and from the *Mit.* and the *Vīramitrodaya* are quoted and discussed.

v. 49 referred to on p. 443) and Kāt. 556⁷⁴⁷. In *Narasimharan v. Antaji* 2 Bom. H. C. R. 61 it was held (probably following Brhaspati, though not quoted in the judgment) that the grandson was liable to pay the debt of his grandfather without interest even if there was no ancestral estate. This was felt to be a great hardship on heirs (taking no ancestral estate) and in order to remove it Bombay Act VII of 1866 (the Hindu Heirs' Relief Act) was passed whereby it is provided that a son or grandson is not liable to be sued for the debts of his deceased ancestor merely by reason of his being such a son or grandson and that the son, grandson or other heir shall be liable only to the extent of the assets that come to his hands. The same is the law laid down in other parts of India by judicial decisions. Br. (S. B. E. vol. 33 p. 328 verse 48) recommends that the father's debt must be paid first of all and after that one's own debt; but a debt of the grandfather must always be paid even before the preceding⁷⁴⁸ two kinds of debt. These two propositions of Hindu jurists are very lucidly, but succinctly, set forth by the Viramirodaya quoted below⁷⁴⁹. The third proposition (which is an exception to the above two) is that even a son is not liable to pay certain illegal and immoral debts of his father. This proposition will be discussed a little further on. A fourth proposition is that even when the father is not dead, the son, grandson or great-grandson may be liable to pay the father's or other ancestor's debt under certain circumstances. Yāj. II. 50 provides that sons (and grandsons) must pay the debt of the father when he is dead or has gone to a distant country or is afflicted with an incurable disease. Nār.⁷⁵⁰ IV. 14, Viṣṇu VI. 27, Kāt.

747. पैतामहं तु वयुर्जैर्न दत्तं रोमिभिः स्थितैः । तस्मादेषांविधे पात्रैर्द्वेषं पैतामहं समम् ॥
कारपा. 556 q. by स्मृतिच. II. p. 170 and नि. र. p. 48.

748. पित्र्यमेतावतो द्वेषं पश्चाद्वात्मीयमेव च । तयोः पैतामहं पूर्वं देवमेवयुगे मदा ॥
बृह. q. by स्प. म. p. 185, वि. र. p. 47, परा. मा. III. p. 364.

749. दुष्टेन रिक्ताग्रहाग्रहणयोः सङ्क्षिकमेव देवम् । पुत्राभाते पात्रेण रिक्ताग्रहणे सोद्वेदे देवम् । अग्रहणे मूलमेव । अपात्रेण तु रिक्ताग्रहणे मूलमपि न देवम् । स्प. म. p. 264.

750. धनव्याहितिं येन स्वजिते द्विदशमसाः ज्ञासिते वा तत्पुत्रपौत्रैर्धनं देवम् । विष्णु. VI. 27; विद्यमानेपि रोमाश्च स्वदेशाभ्युपनिषि वा । विज्ञात्संवासादेवयुगे पितृकुलं सुतैः ॥
व्याधितान्मत्तवृद्धानां तथा दीर्घपशसिनाम् । ज्ञानमेवविधं पुत्राश्च जीवतामपि दापयेत् ॥
सोमिध्वेपि पितुः दुष्टैर्ज्ञेयं द्वेषं विभावितम् । जातवन्धपतिभ्योऽन्ततदन्विवादिरोमिणः ॥ कारपा. 348-350 q. by अपराक्ष. p. 630, वि. र. pp. 50-51, परा. मा. III. 364, स्मृतिच. II. p. 169, स्प. नि. pp. 255-56. Some of these ascribe the last to बृहस्पति. The first and third verses of Kāt. are quoted in *Pada Venkanna v. Sreenivasa* 41 Mad. 136 at p. 149. The स्प. नि. (p. 256) remarks that these texts indicate that during the father's lifetime only the sons are liable for the father's debts and not the grandsons, but if no sons are alive then even grandsons will be liable.

548-550 state that when the father, though living and near, becomes an ascetic (acc. to Visṇu), is afflicted with such diseases or calamities as blindness from birth or loss of caste (due to grave sins), lunacy, tuberculosis, leprosy and other (incurable) diseases or when he has left his country or has gone on a long journey or is very old (above 80) the son will have to pay the debt of the father after the twentieth year (from his going abroad). Acc. to V. R. (p. 50) if the father's disease was incurable or if it was certain that he would not return from his journey then the son was bound to pay at once and was not entitled to wait for 20 years. Kat (552-553) introduces⁷⁵¹ a further restriction that even when the father is dead, if the son has not attained years of discretion (i. e. if he is a minor) he need not pay the debt of his father during his minority; but when the proper time to pay arrives he must pay the debt; otherwise the (ancestors) may remain in hell. Thus the son's liability during the father's lifetime or absence was not absolute but limited according to the smṛtis and digests; judicial decisions, however, have brushed all this aside and the son's liability to pay his father's debts during the latter's lifetime is now as absolute as after his death. This will be discussed further on.

According to all smṛti writers even the son, though he may have taken the ancestral estate, is not liable to pay certain debts of the father which are compendiously described as 'illegal or immoral' in the decisions of courts. Gaut.⁷⁵² XII.

751. भाग्यव्यवहारेण पितृपुत्रेण कश्चित् । काले तु विधिया देवं वसिष्ठोऽनुरोधेन वा ।
अप्राप्तपुत्रादप्यस्य सन्तानोपि हि गर्गभाक् । स्वातन्त्र्यं हि स्मृतं त्र्यम्बके त्र्यम्बके गुणव्यक्तम् ॥
कात्या. 552-553 q. by स्मृतिच. II. p. 164, अ. न. प. 263. The 2nd is
नारद IV. 31.

752. यातिभाष्यणिक्कुशुलकमयसूतद्वयाः । इत्याद्याभ्यवेष्टुः । गी. XII, 38; याति-
भाष्यं दण्डशुलकशेषमाहिकं सौरिकं कामदानं च नाकामः पुत्रो दायादो वा विक्रयहरो दद्यात् ।
अर्थशास्त्र III, 16; सुराकामयसूतं दण्डशुलकाश्लेषिकम् । इत्याद्याभ्य वेष्टुः पुत्रो दद्यात्
पैतृकम् ॥ दर्शनमतिपूर्वम् दत्तः याचयिष्यति वा ॥ न तत्पुत्रा सने द्युदयद्वयानां च स्थितः ॥
वा. II. 47, 54; न इत्यनेन विना दद्याद्वयात्पुत्रस्तु पैतृकम् । कामकोपसुराद्यन्तयातिभाष्यकृतं
विना ॥ नारद IV. 10; दण्डे वा दण्डशेषे वा शूलकं त्र्यम्बकेन वा । न दातव्यं तु पुत्रेण पञ्च
न व्यापारिकम् ॥ उक्तम् q. by मिता. on वा. II. 47; कात्यायन explains कामकोप-
कृत debts (mentioned in Nār. IV. 10 and Bg.) as follows: 'परपूर्वविधिं वत्
विद्याकामकृतं दद्यात् । यत्र विना मनुष्याय कोपाद् दण्डं विनाश्य वा । उक्ते तुष्टिकरं वत्
विद्या कोपकृतं हि त्वम् ॥ कात्या. q. by अपरार्क p. 648, स्मृतिच. II. p. 170, परा. मा.
III. p. 266, वि. र. p. 58, अ. न. प. 266. इत्याद्याभ्य is explained as पूर्वो बन्धिनि म्ले
च कुर्वन्ने कित्ते शटे । चाद्व्यवहारेण चोरेषु दत्तं भवति निष्कलम् ॥ q. by मिता. on वा. II. 47,
स्मृतिच. II. p. 170.

38, Kaut. III. 16, Manu VIII. 159-160, Vas. 16. 31, Yaj. II. 47 and 54, Nār. IV. 10, Bṛ. (S. B. E. vol. 33 p. 329 verse 51), Kāt. (564-565), Uśanas and Vyāsa provide that the son is not bound to pay the following debts of his father viz. those incurred as a surety (for honesty or appearance), for drinking or in gambling, those arising from idle promises (to bards, wrestlers and the like), debts for promises made under the influence of wrath or illicit love to women, the balance of a fine or toll and those that are not *vyāvahārika*. A debt arising from wrath is explained by Kāt. as one where the father causes physical injury to another or destroys another's property through anger and then promises something to pacify the person wronged. As regards the suretyship debts of the father, Yaj. II. 54, Vyāsa and Kāt. (561) provide that when the father was a surety for payment, then the son was bound to pay the principal of the debt for which the father stood surety, but the son of the son was not liable at all to pay the suretyship debt of his grandfather even when the latter was a surety for payment⁷⁵³. These verses about the debts which the son was not bound to pay have been quoted and explained in numerous decisions of the courts. But as this work does not profess to be a treatise on modern Hindu Law those cases are passed over here. What is meant by 'debts that are not *vyāvahārika*' has presented the greatest difficulty to the medieval commentaries and digests and also to modern courts as noted below⁷⁵⁴. Kāt. 534 further notes that

753. कर्णे पैतामहं पीडाः प्रतिभाष्यागतं सुतः । समे दद्यात्समुत्ता तु न दद्यात्पणिति निश्चयः ॥ व्यास उ. by the मिता. on वा. II. 54; प्रतिभाष्यागतं पणित्वमित्यर्थः न तु तद्वच्चित् । पुत्रेणापि समे द्येयमुक्तं सर्वत्र पितृकम् ॥ जाल्पा. उ. by अणराक p. 656. चि. र. p. 44.

754. यच्च न व्यावहारिकं न व्याप्यमित्यर्थः । अणराक p. 658; 'सौरिकम्' स्मृतिच. II. p. 170; न व्यावहारिकं सुरापानादिनिमित्तम् । श्र. य. p. 263; न कुदुम्बोपयोगीत्यर्थः । बालम्भडी, व्यवहारवलिष्कृतम् । चि. चि. p. 17. Colebrooke translates न व्यावहारिकं as 'debt for a cause repugnant to good morals'; other renderings are 'which as a decent and respectable man the father ought not to have incurred' (32 Bom. 348 at p. 351); 'not lawful, usual or customary' (39 Cal. p. 862. at pp. 868-869); 'not supportable as valid by legal arguments and on which no right could be established in a court of justice in the creditor's favour' (37 Mad. 458 at p. 460); vide *Bai Mani v. Usafat* 33 Bom. L. R. 130 (at p. 133) and *Bai v. Maneklal* 56 Bom. 36 where the various meanings of 'avyāvahārika' and the conflict of judicial decisions are set out (at pp. 50-53). In the latter case the wide meaning of the words given in 32 Bom. 348 has been disapproved of (at p. 53). In *Govindprasad v. Raghunathprasad* L. L. R. (1939) Bom. 533 a Full Bench has dealt with the meaning of 'avyāvahārika'. In *Hamraj v. Khanchand* L. L. R. (1943) All. 727 the Privy Council state the various renderings of *avyāvahārika* given by different authors and judges and hold that Colebrooke's rendering makes the nearest approach to the real meaning of the word as used in the *śruti* and that it is the character of the debt that is to be looked to and not the actions of the father.

where the father became a surety for appearance (or honesty) after receiving a pledge from the person whose surety he became, then the son of the surety may be made to pay the money due from that pledge in case the father is dead or has gone abroad⁷⁵⁵.

The case law on the subject of the father's debts and the son's liability to pay them has assumed enormous proportions. This is not the place to discuss the case-law. But as the courts in India profess to follow the Hindu Law of the sages and medieval digests, it is necessary to examine some of the principles laid down by the latest decision of the Privy Council. In *Brij Narain v. Mangla Prasad* 51 I. A. 129 (=45 All. 95) the following five propositions are laid down by the Privy Council (at p. 139): (1) the managing member of a joint undivided estate cannot alienate or burden the estate *qua* manager except for purposes of necessity; (2) if he is the father and the other members are the sons, he may, by incurring debt, so long as it is not for an immoral purpose, lay the estate open to be taken in execution proceeding upon a decree for payment of that debt; (3) if he purports to burden the estate by mortgage then, unless that mortgage is to discharge an antecedent debt, it would not bind the estate; (4) antecedent debt means antecedent in fact as well as in time, that is to say, that the debt must be truly independent and not part of the transaction impeached; (5) there is no rule that this result is affected by the question whether the father, who contracted the debt or burdened the estate, is alive or dead. It

755. सूरीया अन्वये पत्र दर्शनस्य सिद्धो भवेत् । तिसा पित्रा पत्रं तस्माद् द्वाप्यः
रपात्तदणं सुतः ॥ कारवा. 534, q. by the Mit. on Yāj. II. 54. अथर्ववे. p. 636.
Vide Choudhuri Govind Chandra v. Hayagrība 10 Patna 94, where it was
held that when a father stood surety for the honesty or good behaviour of
another as guardian for a minor's property, the son was not bound to pay
the suretyship debt of the father. In Kottapalli v. Kanuparti 58 Mad.
375, where the father executed a surety bond that a certain judgment debtor
would file an insolvency petition within a specified period and the debtor
failed to do so, it was held that the guarantee was one for confidence or
honesty and that the sons were not liable on the father's death. Similarly in
Dhir Narain v. Shiva Sahay A. I. R. 1935 Patna 127 it was held that sons
are not liable under Hindu Law where the father stood surety for appearance
only. In Narayan v. Venkatacharya 6 Bom. L. R. 434 it was held that
under the law of the Mitākṣarā a grandson is not liable to pay a debt which
his grandfather contracted as a surety unless the latter in accepting the
liability of a surety received some consideration for it.

is necessary to see how far these principles agree with or deviate from the law of the *smṛtis* and the digests. The first proposition is in consonance with the law of the *smṛtis* and of the commentaries like the Mit. Yaj. II. 45 provides⁷⁵⁶ that whatever debt is contracted by the head of the joint family for the necessities of the family has to be paid by the members who take the ancestral estate when the head is dead or goes to a foreign country. The Mit. on Yaj. II. 114 quotes and explains a *smṛti* text "Even one (the head or manager of a joint family) can make a mortgage, sale or gift of immovable property in a time of distress, for the necessities of the family and particularly for religious and charitable purposes". What is meant by 'debts in times of distress' and 'kutumbārthe' is explained by Kāt. (542-43) quoted in n. 756. This has been the foundation of numerous cases, the first and the most important of which is that of *Hunoomanpersaid v. Mussumat Baboo*⁷⁵⁷ 6 Moore's Indian Appeals p. 393 (P. C.). The 2nd proposition laid down

756. अविभक्तेः कुटुम्बार्थं वदन्तं तु कृतं भवेत् । दण्डस्तद्विधिभ्यः भेदे योदिते वा कुटुम्बिनि ॥ या. II. 45: कुटुम्बार्थमन्वयेन कृतं व्यापितं वा । उपह्वयनिमित्तं च विद्यादापल्लवे तु नत् ॥ कन्यावैवाहितं चैव देवकार्यं च वक्तव्यम् । एतत्कृते पदात्पदं कुटुम्बेन कृतं मनोः ॥ कारपा. q. by अपराधं p. 647, परा. मा. III. p. 268. Nār. IV. 3, Manu VIII. 166, Visṇu Dh. S. VI. 39 contain similar provisions, all of them employing the word कुटुम्बार्थं (for the purposes or benefit of the family).

757. At pp. 423 and 424 of 6 Moore's Indian Appeals the Privy Council employ the following words that have become classical: 'The power of the manager for an infant heir to charge an estate not his own is under the Hindu Law a limited and qualified power. It can only be exercised rightly in a case of need or for the benefit of the estate. The actual pressure on the estate, the danger to be averted or the benefit to be conferred upon it in the particular instance, is the thing to be regarded.... They think that if the lender does inquire and acts honestly, the real existence of an alleged sufficient and reasonably credited necessity is not a condition precedent to the validity of his charge and they do not think that under such circumstances, he is bound to see to the application of the money'. The words 'the actual pressure, the benefit to be conferred' and the remarks about inquiry by the lender are a prolific source of litigation and have given rise to a mass of case-law. In L. R. 51 I. A. 129 at p. 137 the Privy Council themselves say that the distinction made between secured and unsecured debts of the father is anomalous. They give an instance. 'A father who is manager borrows a like sum from A and B. To A he gives a mortgage on the family estate containing a personal covenant. To B he gives a simple acknowledgment of loan. B sues and gets a decree; on this decree execution can follow and the estate can be taken. A, suing on his mortgage, cannot recover' (because the debt was not antecedent).

above also follows from several *smṛtis* (such as *Yāj.* II. 50, *Viṣṇu Dh.* 8, VI. 35, *Nār.* IV. 2, 4, 6) and the rules about immoral debts cited above. But it is difficult to understand why the Privy Council make a distinction between a simple personal money debt of the father and a debt secured by a mortgage (as in propositions 2 and 3). The ancient texts and commentaries make no such distinction. Vide 42 *Mad.* 711 at p. 731, 26 *Bom.* 206 at pp. 317-219 (F. B.) and 60 *Bom.* 311 (F. B.) where this is pointed out. With the greatest respect it must be said that the distinction is not only without *dharmaśāstra* authority, but is also anomalous. The distinction between 'antecedent debt' and a debt contracted at the time of executing a mortgage is unknown to the *smṛtis* or digests. The Privy Council had used for the first time in a very early case (viz. *Suraj Bansi v. Sheo Proshad* 6 I. A. 88 at p. 106 = 5 Cal. 148, 171) the words 'antecedent debt'⁷⁵⁸ for which there is nothing corresponding in the Sanskrit authorities and round which elaborate arguments came to be centred in numerous later cases. According to the Privy Council (proposition 5) the son's pious duty to pay his father's debt is as absolute during the father's lifetime as after his death. It has been shown above that the duty was not absolute but qualified and limited during the father's life according to the *smṛtis*.

Yāj. II. 52, *Kant.* (III. 11) provide⁷⁵⁹ that husband and wife, father and son and brothers cannot, as long as they are undivided, stand sureties for each other or be debtors and creditors of each other or be witnesses for each other. The *Mit.* has a long note on *Yāj.* II. 52. It shows that a wife may be divided as to estate from the husband if the latter desires (as laid down in *Yāj.* II. 114) and that in that case there may be the relation of debtor and creditor between them.

758. The proposition laid down in 6 I. A. at p. 106 is 'where joint ancestral property has passed out of a joint family, either under a conveyance executed by a father in consideration of an antecedent debt or in order to raise money for an antecedent debt or under a sale in execution of a decree for the father's debt, his sons, by reason of their duty to pay their father's debts, cannot recover that property, unless they show that the debts were contracted for immoral purposes and that the purchasers had notice that they were so contracted'.

759. आदृत्यामथ दृग्पात्रोः पितुः पुत्रस्य चैव हि । यतिभावस्युपे साधयमाविभक्ते न तु स्मृतम् । या. II. 52; दृग्पात्रोः पितृपुत्रयोः आदृत्यां चातिनक्तानां परस्परकृतस्युपमन्त्राध्वज्जोडितम् III. 11.

The Mit. further explains the sūtras of Āpastamba⁷⁶⁰ (Āp. Dh. S. II. 6. 14. 16-19) which lay down 'there can be no division between husband and wife, for since the day of marriage they have to perform religious rites together, they also participate together in the rewards of merit arising from religious rites and also in the wealth acquired; for this reason when the husband has gone abroad if the wife spends on necessary occasions (out of the family wealth) it is not declared to be theft'. The Mit. explains that the absence of division between husband and wife is restricted to religious rites performed with *śrauta* fires or *smūrta* fire and in the rewards of meritorious acts and not in all actions or as to all property. Therefore in other charities where no sacred fire is required (*pūrta* acts such as constructing a well or a public park) they have separate rights. Vide S. V. pp. 353 for various explanations of Bhāruchi and others on Āp. Dh. S. and V. P. pp. 255-56.

The father is not bound to pay his son's personal debt; the husband is not liable to pay the wife's debt, nor the wife her husband's or son's. But in all these cases if the debt is incurred for the benefit or purposes of the family by the son, the wife or the husband then the father, husband or wife respectively would be liable (Yāj. II. 47, Nār. IV. 10-11, Kāt. 545, 579)⁷⁶¹. If the father promised to pay his son's individual debt or if he approved or acquiesced in it he was liable to pay it. Manu VIII. 167, Yāj. II. 45, Nār. IV. 12, Br. (S. B. E. 33 p. 329 v. 50), Kāt. (545) provide that a debt incurred for the purposes of the family by any one such as the son, brother, uncle, the wife, the mother, the pupil or a servant or a slave even without the consent of the head of the family when he has gone abroad, should be paid by the head of the family. This liability and the liability when the manager of a family contracts a debt for the benefit or necessities of the family arise from agency (*implied*) or authority. Kaut. (III. 11) holds that the husband may be seized (for work)

760. आपापपोर्न विभागो विद्यते । पाणिग्रहणादि महत्तु कर्मसु । तथा दण्डफलदेषु दण्डपरिग्रहेषु च । न हि भर्तृविवासे नैमित्तिके दाने श्लेषमुपदिशन्ति । आप. ध. सू. II. 6. 14. 16-19.

761. पोषितरचामतेनापि कुटुम्बार्थं यत् कृतम् । दासस्त्रीमातृशिल्पैर्वा दद्यात्पुत्रेण वा मुक्तः ॥ कात्या (545) q. by अपराकं p. 648, पञ्च. मा. p. 268, वि. १. 36. अपराकं reads दासस्तुल्यमातृशिल्पैर्वा. अमात्य would mean agnates residing in the house. This verse is quoted in Virasami v. Apparvamsi 1 Mad. H. C. R. p. 375, 379a. विदुष्यन्नाहुदुष्करीदामशिल्पाह्वयीविभिः । पदं वृणीतं कुटुम्बार्थं तदं वृणी दातुमर्हति ॥ बृह. q. by स्मृतिच II. p. 174.

if he starts to go abroad without providing for the return of the debt contracted by his wife.⁷⁶²

The general rule that the husband was not liable to pay the wife's debt had an exception viz. the husband was liable for the debts of the wife in the case of cowherds, vintners, actors, washermen and hunters (and the like) whose income depends on their wives and whose household expenses are defrayed by their wives (Yāj. II. 48, Viṣṇu Dh. S. VI. 37, Nār. IV. 19). Similarly the rule that the wife was not liable for the husband's debt had certain exceptions, viz. a debt of the husband which she promised to pay because he was dying or going abroad or which was contracted jointly with her husband⁷⁶³ (Yāj. II. 49, Nār. IV. 16-17). The Mit. on Yāj. II. 49 answers the objection raised by some that, as according to Manu VIII. 416 (= Udyogaparva 33. 64) the wife, son and slave are without property and whatever they earn is acquired for him to whom they belong, the wife would not be able to pay anything at all. The reply is that this verse of Manu does not mean that a wife or son can own no property at all, but all that it declares is that they have no independent power to dispose of their property.

The order in which persons are liable to pay a man's debts after his death is declared by Yāj. II. 51, Nār. IV. 23, Br. (S.B.E. vol. 33 p. 329 verse 59), Kāt. (562, 577), Viṣṇu⁷⁶⁴ VI. 39-30.

762. पतिस्तु दायाः कीदृशमुपमनयतिभाप्योपैत इति । अर्थशास्त्र III. 11.

763. न कीं पतिकृतं दद्यादने पुत्रकृतं तथा । अन्युपेताहने पद्मं सहा दत्त्वा कृतं भवेत् ॥ नारद IV. 16; नर्वा पुत्रेण वा सार्धं केलनेनात्मना कृतम् । कर्णमेवंविधं देवं नाम्बधा तद्वर्तते स्त्रिया ॥ मर्तुकामेन वा भर्ता योक्तुं देवमुच्यते त्वया । अन्यथापि सा दत्त्वा धनं दद्यादभितं स्त्रियाम् ॥ कात्या, 546, 547 q. by स्मृतिच. II. p. 176, एव. द. pp. 273-274, in I. L. R. 1 Bom 121 at p. 124 Kāt. 546 is cited. In Narotam v. Nanka 6 Bom. 473 it was held that a married woman who contracted a debt jointly with her husband was liable to the extent of her *stridhana* only and not personally.

764. धनकीहारीपुत्राणांमुपमनयो धनं तरेत् । पुत्रोऽसतोः कीदृशिनोः कीहारी धनि-
पुत्रयोः ॥ नारद IV. 23; पूर्वं दद्याद्वनयात् पुत्रस्तस्माद्वनतरम् । योपिदद्यात् पुत्राभावे
पुत्रो वापन्ननिर्धनः ॥ कात्या. (577) q. by स्मृतिच. II. p. 172, एव. द. p. 271; रिक्थ-
हारी कर्णं देवं तदुभावे च योपितः । पुत्रेभ्य तदुभावेनै रिक्थभागिभिर्यथाक्रमम् ॥ कात्या.
(562) q. by विष्णुरूप on चा. II. 47; विष्णुरूप quotes a prose passage of बृहस्पति
'धनकीहारीपुत्राणां पूर्वाभावे यथोक्तस्माद्वनतरम् तदुभावे क्रमशोऽन्येर्वा रिक्थभाजाम्' ; while
later works like the स्मृतिच. II. p. 172 and एव. द. p. 267 quote a verse of बृह.
'कीहारी च तथैव स्यादुभावे धनहारिणः' . The वैजयन्ती on विष्णु. IV. 30 explains
Yāj. II. 51 as अथ पुत्रो विदोष्यः तद्वैतानि कीदृशानि विदोषणानि । तत्रानेकपुत्रसमवाये
रिक्थयाहः पुत्रः । तदुभावे कृतदाराकृतदाराणां समवाये योपिदद्यात् ... । तदुभावे अन्यथा-
भितद्वयः । न विदोष्ये अन्ये पुत्रदारादयो यस्य स अन्यथाः पुत्रदारादिरहितः । न भित्तं दूष्ये
वेनासौ अभितद्वयः ... निर्धनो वा । अन्यथासहितः अभितद्वयः सधनपुत्रोऽपि समाप्तः ।
तादृशः पुत्रः कर्णे दायः ।

Whoever takes the wealth of the deceased (whether a son or a collateral heir) is primarily responsible to pay the debts of the deceased; but if the deceased died without leaving any property, then he who takes his wife has to pay the deceased's debts; if there be no wealth or taker of the deceased's widow, then the son even if he succeeds to no wealth has to pay. This liability may be said to be based on the equitable and moral principle that whoever takes the wealth of the deceased or his widow (over whom the deceased had a sort of dominion) was bound to pay his debts. There appears to be some conflict between the texts; but it is more apparent than real. Verses (like *Kat.* 577) where the son is placed after the taker of wealth and before the taker of the widow refer to a son who has separate and independent wealth of his own and is more wealthy than the taker of the widow (though he himself being disqualified did not succeed to, ancestral wealth). When there is no wealth and there are several sons one of whom is congenitally blind or otherwise incompetent to succeed then the other sons are liable. From the fact that the taker of the widow is made liable for the debts of the first husband it should not be supposed that the ancient sages approved of widow-remarriage. On the contrary they condemned it (vide *Manu* V. 162), but, as the *Mit.* (on *Yāj.* II. 51) remarks, remarriages took place by custom among certain castes and nothing could prevent persons from taking widows as kept mistresses. Therefore as the wife was half of the husband (acc. to *Vedic* and other passages q. in *H. of Dh.* vol. II. pp. 428, 584 n.) she was practically the husband's wealth (*Nār.* IV. 22 expressly says so)⁷⁶⁵ and so the taker of the widow was saddled with the obligation to pay the debts of the deceased. This sentiment continued to modern times and in the Bombay Presidency the Legislature had to declare (by *Bombay Act* VII of 1866, sec. 4) that 'no person who has married a widow shall merely by reason of such marriage, be liable for any of the debts of any prior husband of such widow'. The *Vaijayanṭi* on *Viṣṇu Dh.* S. VI. 30 quotes *Yāj.* II. 51 and *Nār.* IV. 23 and

765. अपनस्य कपुत्रस्य सुतरापोपैति यः स्त्रियम् । स आनयेद्वृणं सोढुः सैव तस्य धनं पतः ॥ *नारद* IV. 22 : पोषिद्विवाहो यद्यपि आश्वविरोधेन न संभवति तथाप्यतिक्रान्तनिषेधः पूर्वपतिकृतवर्णपञ्चरण्याधिकारी भवत्येव । पोषिद्विवाहो यद्यन्यद्वृणं स्वीरिणीनामन्तितां वृद्धाणि यश्च पुनर्वृणं तिष्ठतां यथामम् । *मिता.* on *वा.* II. 51. Then *नारद* (ब्रह्मसूत्रयोग) verses 45-53 are quoted by the *Mit.*

explains them differently. According to it the word 'putra' (in Yāj. II. 51) is qualified by all the three adjectives viz. 'rikthagrāha', 'yosidgrāha' (one who is married) and 'ananyā-śritadravya' (one who has no wife nor child and one who has taken no ancestral wealth, either because he does not desire it or because none exists). Therefore according to it among sons, the son that takes ancestral wealth has to pay the debts of the father, on failure of such a son when some of the sons are married and some are not, the married ones have to repay ancestral debts and lastly when there are no married sons the one that is wifeless, childless and also without wealth has to pay them.

Nikṣepa (deposit). The words *nikṣepa*, *upanidhi* and *nyāsa* are sometimes said to be synonyms (as done by Amara)⁷⁶⁶, though several ancient works define them separately. According to Yāj. II. 65 *upanidhi* is the deposit of an article enclosed in a box or the like made with another without telling him of the contents of the box. Yāj. II. 67 holds *nyāsa* and *nikṣepa* to be different from *upanidhi*. Nārada⁷⁶⁷ as quoted in the Mīt. on Yāj. II. 65 defines *upanidhi* as the deposit of an article in a sealed receptacle without counting it in the presence of the person to whom it is entrusted and without telling him what the receptacle contains, while a *nikṣepa* is a deposit entrusted to a man after counting the articles in his presence. Manu VIII. 149 (= Vas. 16. 18), Kauṭ. III. 12 hold *nikṣepa* and *upanidhi* to be distinct. A verse quoted by Kṣīrasvāmin on Amara defines *nyāsa* as an open deposit and *nikṣepa* as the delivery of some goods to an artist or craftsman for being worked up or manufactured. Nār. (V. 1 and 5) defines *nikṣepa* as the deposit of one's articles with another through confidence, while *upanidhi* is defined in the same way as Yāj. II. 65. Viśvarūpa⁷⁶⁸ defines *nyāsa* as an open deposit for safe custody and *nikṣepa* as delivery of one's article to another for handing over to a

766. इमास्तुपनिधिर्ग्राहः पतिदानं तदुपेयम् । अमरकोशः । स्मार्ते लोको भेदेति । वास-
मन्थ ... स्वस्य पदपितम् । द्रव्यमुपनिधिर्ग्राहः यकाद्य रथापितं तु यत् । निक्षेपः शिथिलहस्ते तु
भाण्डं संस्कृतुं पितम् । श्रीरस्वामी on अमरकोशः.

767. यथाह नारदः । असंख्यातमापिज्ञातं समुद्धं पक्षिर्धोयते । तज्ज्ञानीषादुपनिधि
निक्षेपं गणितं विदुः । मिता. on वा. II. 65.

768. ग्राहो निर्दिष्टस्वकं द्रव्यं यद्वतपार्थ समर्पितम् । निक्षेपोऽप्यज्ञातं पदं यद्वत्पदम्
द्वेषेन निक्षेपम् । विश्वरूप on वा. II. 69.

third. Kat. (592) makes ⁷⁶⁹ *upanidhi* a generic term for all bailments such as a sold article remaining in the hands of the vendor, a deposit, a pledge, bailment to one for delivery to another, loan of article for temporary use, goods handed over for sale to an agent. The Mit. on Yāj. II. 67 defines *nyāsa* as handing over to some member in the house an article in the absence of the head of the house for delivery to the head of the house and *niksepa* as a deposit in the presence of the depositor himself. The V. P. p. 280 briefly distinguishes the three as noted below.⁷⁷⁰

Niksepa or *upanidhi* was a bailment made in trust and differed from an *ūdhi* in this that the former was not given by way of security for a debt or for collecting interest but in confidence for safe custody.⁷⁷¹ Br. (SBE vol. 33 p. 332 verse 2) says that such a deposit is made with another when one is leaving one's home, or through fear of the king or for depriving one's kinsmen.⁷⁷² Mam VIII. 179 (=Nar. V. 2) says that one should entrust a deposit to a person who is born of a good family, is well-conducted, knows *dharma*, speaks the truth, has a large family, is wealthy and straightforward. The person with whom a deposit is made generally receives no personal benefit from it; hence the *smṛtis* (such as Br. in SBE 33 p. 333 verses 6-8) extol the holder⁷⁷³ of a deposit made in trust to be as meritorious as one who makes gifts of gold or other inferior

769. ऋषः योषितनिक्षिप्तं वन्धान्वाहितवाचितम् । वैपवृत्तपरितं चैव सोर्धलूपनिधिः
स्मृतः ॥ कात्या. 592 q. by स्मृतिच. II. p. 3, अपराज् p. 663, विवादचन्द्र (p. 27,
reads ऋषः योषितनिक्षेपो).

770. बाह्यकरणं समक्षे गणयित्वा स्थापितं निक्षेपः । गृहस्थमिगोऽसमक्षं गणितमगणितं
वा तस्मिन्गणयते पतद्वातपथमित्युक्तवान्यस्य तत्पुत्रादेहेस्ते द्वयं न्यासः । गृहस्थिभूतं समक्षमगणितं
स्थापितमुपनिधिपरिति । स्प. म. p. 280.

771. पूर्वमुपचयपेक्षया पक्षस्ते द्वयमुप तद्व्यपेक्षया रक्षणार्थमिवारचस्ते द्वयमुपनिधि-
रिति कणादानामन्तरमुपनिधेरवसरः । स. वि. p. 265.

772. स्थानत्यागाद्व्यवसायं दापादानौ च वज्रनात् । स्वद्वयमप्येतेन्यस्य हस्ते निक्षे-
पमाह तम् ॥ बृह. q. by स्मृतिच. II. p. 178; राजचौसरातिभवाद्दापादानौ च वज्रनात् ।
स्थापयतेऽप्यस्येते द्वयं न्यासः स परिकीर्तितः ॥ बृह. as q. by स्प. म. p. 279.

773. द्यूतौ वज्रवेद्युषं ह्येनकुप्याम्बरादिकम् । तत्स्वापातपतो न्यासं तथैव श्रवणा-
मस्य । भर्तृदेवे कथा नायाः ईसः पुत्रमुद्गृह्ये । द्यौचो भर्तृसधा न्यासे भक्षितोपेक्षिते दृष्टाय ॥
न्यासद्वयं न ह्यङ्गीपातप्राशस्त्यवसरकरः । गृह्णते पातपेक्षानाम्भकुप्याचितमपेक्षे ॥ बृह-
q. by स्मृतिच. II. p. 178, वरा. मा. III. p. 281, स्प. म. p. 381, अपराज् p. 663
(first two only).

metals or clothes and condemn the misappropriation of a deposit or the losing of it through negligence as very sinful. The idea is that no one is bound to accept a deposit, but when a person accepts it, his primary duty is to preserve it with care and the next duty is to return it at the time agreed or on demand. The obligation arises from the trust reposed in a person. The rights of the bailee are limited as compared to those of the mortgagee or pledgee, but the very fact of his custody in trust clothes him with certain rights. The amount of care required of the depositee is the same as in the case of an *ādhi*, viz. he is to take the same care of it as he takes of his own goods and is not liable if the deposit is lost (along with his own property) through act of God or the king or is stolen by thieves (Manu VIII. 189, Yaj. II. 66, Nār. V. 9 and 12, Br. in S.B.E. 33 p. 333, verse 10, Kāt. 593).⁷⁷⁴ In the *Mrochakatika* Cāradatta accepts liability for the loss of the ornaments deposited with him by Vasantasena, though they were stolen, because of his high sense of chivalry and of his idea that proper care was not taken by him or his friend. But Nār. V. 9 is careful to add that the loss through *vis major* or through theft must be real and not fraudulently brought about.⁷⁷⁵ Nār. V. 6 and Br. (in SBE 33 p. 334 verse 14) state that a deposit may be made in the presence of witnesses or without them, that it should be returned in the same way and condition in which it was made and that if there is a dispute, it may be settled by ordeal (when there are no witnesses).⁷⁷⁶ The article deposited must be returned in the same condition (as regards seal &c.) in which it was handed over (Yaj. II. 65). It must also be returned to the man himself who made the deposit and not to his co-owners (Manu VIII. 185, Br. in SBE 33 p. 333 verse 9).⁷⁷⁷ He is estopped

774. देवराजोपपातेन यदि लब्धशमाप्नुयात् । यदीदृशमसहितं तत्र दोषो न विद्यते ।
बृह. q. by स्मृतिसूत्र II. p. 179; निमित्तं यस्य यत्किञ्चित् तत्तत्पत्तेन पातयेत् । देवराज-
कुतादयो विनाशस्तस्य कीर्यते । कात्या. q. by स्मृतिसूत्र II. p. 179, ख. म. p. 282.

775. यदीदृशः सह योरेव भद्रो नष्टः स दापितः । देवराजकुले तद्वच्च जेवज्जिह्वाकारितम् ।
नारद V. 9.

776. योऽं कृते निधौ यत्र विसंवादः सजायते । विभाक्ते तत्र द्विपक्षमप्योरपि च श्रुतम् ।
बृह. q. by अथर्ववेद p. 664, ख. म. p. 284.

777. रथापितं येन विधिना येन यज्ञ यथाविधि । तथैव तस्य तद्वेदं न द्वेषं यावन्तरे ॥
बृह. q. by स्मृतिसूत्र II. p. 181, परा. मा. III. p. 281. 'रथापिततरस्य यस्य रथापितद्वये
स्यान्वयमस्ति स इह यावन्तरे द्वावुच्यते ।' स्मृतिसूत्र II. p. 181, ख. म. 356 remarks on
मनु VIII. 186 'यद्यन्तरद्वये तु ... नैकस्मिन् यावन्तरे द्वेयम् । किं तु सवयावन्तर-
संक्रियामिति न निशानुबन्धुभिरभिधीक्य द्वावनेन सूचयाम्भूत् ।

from recognising the title of any one except the depositor, as in section 116 of the Indian Evidence Act. But if the bailor be dead the bailee can return it of his own accord without demand to the co-owners (Manu VIII. 186 = Nār. V. 10). In doing so however he must not return it to one of several heirs, but to all or in the presence of all. The loss of a deposit may be due to the fact that the bailee consumes it by using it, or to the bailee's negligence or to his ignorance. In these cases the bailee was made to reimburse the bailor for the loss. But Kāt. (597)⁷⁷⁸ makes a difference, viz. when a bailee consumes the deposit by use he should be made to pay the price with interest, when he loses it through negligence he is to pay only the price (but without interest) and if he loses through ignorance, then he is to pay a little less (i. e. less by one-fourth) than the price. Vide Br. (S B E vol. 33 p. 333 verse 11) and Nār. V. 8. If a bailor knowing the proposed bailee to be a careless man deposits his goods with him, the bailee is not liable even if the goods are lost from any cause whatever (Kāt. 599).⁷⁷⁹ If immediately on demand by the depositor the bailee does not return the thing deposited or it is lost after demand from any cause whatever (including act of God or king), the bailee has to return the thing or the price of the thing (when lost) and also is liable to be fined by the king in the same amount (Yāj. II. 66, Nār. V. 7). If the bailee makes use of the article bailed without the permission of the bailor, he should be fined by the king and should be made to return the thing bailed with interest (Yāj. II. 67, Nār. V. 8). In the Rāj. T. (VIII. 124-157) occurs the story of a person who had deposited one *lakṣ* of *dināras* with a merchant and had withdrawn some money from time to time. It further states that, when the balance was demanded, the merchant furnished a statement of accounts giving a list of

778. व्यासादिकं परद्रव्यं प्रभक्षितमुपेक्षितम् । अज्ञाननाशितं चैव देनं दातव्यं स तु वत् ॥ भक्षितं मोक्ष्यं दातव्यं समं दातव्यं उपेक्षितम् । क्षिप्त्वापूतं च द्राव्यं स्थाप्यमप्यमज्ञानं नास्ति ॥ कात्या. 596-597, quoted by परा. मा. III. p. 283 (ascribes 597 to व्यास), स्व. प्र. p. 282 (ascribes 597 to both कात्यायन and व्यास), मिता. on वा II. 67 (597 only), बृह. प. by परा. मा. III. p. 283 and स्व. प्र. p. 282 has a similar verse भेदेनोपेक्षया स्वासं ग्रहीता यदि नाग्रयेत् । वाच्यमानो न दद्याद्वा द्राव्यं तत्सोद्वं भवेत् ॥ 'क्षिप्त्वापूतमिति चतुर्थाश्लीनम्' मिता. Compare Sec. 161 of the Indian Contract Act.

779. ज्ञात्वा द्रव्यविषयेन तु दाता एव निमित्तिषेत् । सर्वोपायविनाशेपि ग्रहीता नैव दातव्ये ॥ कात्या. प. by स्मृतिच. II. p. 179, परा. मा. III. p. 283, वि. र. 89, स्व. प्र. p. 282.

fictitious items of withdrawals for many years with interest and showing that very little of the deposit was left. The king brought home the fraud to the merchant and ordered that the original deposit being used by the merchant should bear interest.

Kāt. (506) provides that when a deposit, a balance of interest, purchase price (not paid though the article be delivered to vendee), or sale price (article sold being retained by vendor though price is paid) is not returned or paid when demand is made, it carries interest at 5 per cent (from the date of demand).⁷⁸⁰ Manu VIII. 191 (which is almost the same as Nār. V. 13) provides that where a bailee does not return the deposit though demanded or where a person without making a deposit claims it from a person, both are to be punished as a thief by the king and to be made to pay a fine equal in amount to the price of the bailed article (claimed). The deposit has to be taken back at the proper time by the depositor and the bailee has to avoid returning it at an improper time; if the latter returns at an improper time he should be made to pay a fine double of the value of the thing⁷⁸¹ (Kāt. 601).

Yāj. II. 67, Nār. V. 14, Br.⁷⁸² (S. B. E. vol. 33 p. 334 verse 15) extend these rules about *nīkṣepa* to other kinds of bailments viz. to *yācitaka* (an article such as an ornament borrowed from a man on a festive occasion), *anvāhita* (what is handed over to a third man and is the property of another and has been pledged with a man), *nyāsa*, *upanidhi*, *tūlpinyāsa* (giving an article such as gold to an artisan like a goldsmith for preparing an ear-ring or the like), *pratinnyāsa* (mutual deposit). Some of the rules about *yācitaka* are stated above

780. निक्षेपं बुद्धिशेषं च कर्तुं विक्रयमेव च । वाच्यमानं न दद्याच्चेदप्येते पञ्चकं शतम् ॥ कात्या. q. by मिता. on या. II. 67, परा. मा. III. p. 224, वि. र. 15. 'यो मूलमे प्रहीत्वा विक्रीतमपि पञ्चादि वाचितं न ददाति केता वा कीत्वा कथमायनमूलमे वाचितं न ददाति स पञ्चकशतकमेव बुद्धिं दद्यादित्यर्थः । वि. र. p. 15.

781. बाह्यस्तूपमितिः काले कालहीनं तु वर्जयेत् । कालहीनं दृढं दृष्टं द्विष्टं च पदाप्यते ॥ कात्या. 601 q. by अथर्क p. 663, स्मृतिच. II, p. 181, परा. मा. III. p. 286, अ. य. p. 285 which remarks (following Sm. C.), पदमयादुपनिशिरस्यस्य हस्तं स्पृशतस्तद्गतं काले स बाह्य इत्यर्थः । तद्वर्जनीयेति काले स्वयमेव नावाचितमर्पणीयम् । सङ्कटाच्चित्तमप्येदं दिति दृष्टमिति स्मरणात् । तद्वये वर्तमाने स्वयमेवापाचितं दीयमानं कालहीनं तस्य दानं दौष्ट्यमेवेति तद्वद्वोति दृष्टो दुष्कः । Compare sec. 159-160 of the Indian Contract Act.

782. अन्वाहिते वाचितके शिल्पिन्यासे सकम्पके । एष एवेदितो धर्मस्तथा च श्रण्या-यते ॥ बृह. q. by स्मृतिच. II. p. 182, अ. य. 287.

(pp. 426-427). Kaut.⁷⁸³ III. 12 states that a *yācitaka* or *avakriṇ* (lent on hire) article should be returned in the same condition in which it was received. If lost through act of God or king or through theft (after taking proper care) the depositae would not be liable. Kāt. (610) provides⁷⁸⁴ that he who having taken the loan of an article for use does not deliver it even on demand should be restrained (by the owner) and forcibly made to return it and fined by the king if he does not return it; he should be made to pay the price with interest (if the thing be lost after demand). If the loan of an article was taken for a specified period or for a particular occasion or purpose and a demand for return be made in the middle and the article is not returned when demanded, the person taking the loan would not be made to pay the price: but if a person who has taken on loan an article does not return it after the period fixed has expired or the purpose is served, the borrower must offer to the owner the price if the article be destroyed or lost and if he does not return even after demand (when the period has ended) the borrower would have to pay the price with interest.

Kāt. (609) states a reasonable counter-exception to the rule in 606 viz. 'when the owner of an article borrowed by another is likely to sustain loss if the article borrowed were not returned on demand, then the borrower should be made to deliver it even though the time fixed has not ended or the purpose of the loan was only half fulfilled'.

There are some special rules about *śilpinyāsi* also. Kāt. (603-604) provides that if an artisan or craftsman retains an article delivered to him beyond the time that was settled (or

783. पाचितकमन्त्रक्रीते वा यथाविधं पूर्वापुरतथाविधेनार्पयेदुः । त्रेयोपनिषाताम्भो देवकालोपरयेधि द्रुमे नर्हं विनर्हं वा नान्वाभयेदुः । त्रेयमुपनिषिता न्वावयातम् । अर्थशास्त्र III. 12. On अन्वाहित there is difference between the digesta. The *मिता*, defines 'यदेकस्य वस्ते निहितं द्रुमे तेनारप्य पश्चादन्वाहस्ते स्वामिने देवर्हि निहितं तदन्वाहितम् ।' and is supported by कलामन (611 q. by वि. र. p. 84) 'अनुमार्गेण कार्पेयु अभ्य-स्तिमन्त्रनाममः । दद्यात्स्वमिति वा दद्यात् स इत्यान्वाहिद्वयम्. ॥' The *मय्यहारसार* p. 144 quotes the very words of the *मिता*. स्मृतिक. II. p. 182 and *व्य.* p. 287 define अन्वाहित as 'स्वमित् र्दिधत् परधमन्त्रवस्ते कुतम्'. 'पतिन्यासस्य च परस्पर-पथोजनपेक्षया लयेदं मदीयं रक्षणीयं मयेदं तदीयं रक्षते इति न्यतरस्य ग्रहणम्. ॥' *मिता*. on वा. II. 67.

784. ये पाचितकमादाय न दद्यात्तथापिचितः । स निद्रुष्य कलारुदात्तो द्रुपत्यथ न दद्याति च. ॥ कलाम. 610 q. by अपराक p. 654, स्मृतिक. II. p. 184, वि. र. p. 92. This shows that he could at once resort to the remedy of वज्र.

agreed) for finishing the work he should be made to pay (its price) even if the article was lost through act of God, but the artisan shall not be liable to pay the price if the article were to be lost through defects in the article itself; if (however) what is delivered for being worked or polished is destroyed through the fault of the artisan he should be made to pay the price⁷⁸⁵.

From the fact that Kat. 596 (quoted above in n. 778) employs the expression '*dāpyah sa eva tat*' (he alone who misappropriates or causes loss of a deposit by negligence), the words of Gaut. XII. 39 (quoted above under *ādhi*) and the fact that *nikṣepa* is a title distinct from *ṛṇādāna* (under which alone the liability of sons, grandsons, and great-grandsons is expressly declared) it follows that sons are not liable for the misappropriation or loss of a deposit or article bailed to their father or other ancestor provided they have not themselves joined or helped in the embezzlement or loss. This is made clear by Haradatta on Gaut. XII. 39, the Vivādacintāmaṇi and the Vivādacandra quoted below⁷⁸⁶.

It is interesting to note that Nār.⁷⁸⁷ V. 15 places on the same level (as to liability for loss) with the depositor and the like the man who takes in his charge a minor that has a good deal of wealth i.e. the person undertaking the position of the guardian of a minor's property has to take as much care of it as of his own and is liable in the same circumstances as a

785. ऐव्य संस्क्रियते न्यासो दिवसैः परिनिश्चितैः । तदुर्ध्वं स्थापयच्छित्तव्यं दाप्यो देव-
होतृषु तत् ॥ न्यासदोषादिनाशः स्थापयित्वा तत्र दापयेत् । दापयेच्छित्तव्यदोषात्तत्संस्कारार्थं
यद्वर्तितम् । कात्या. 603-604 g. by स्मृतिच. II, p. 183, परा. मा. III. p. 288, नि. ४
p. 98. The example of 604 given in Sm. C. and others is old clothes
delivered to a washerman and torn in the process of cleaning. Compare
Sec. 161 of the Contract Act with verse 604.

786. न केवलं पुत्रानिव मांयामभवेत्तुः किं तर्हि येषां सकाशे निष्पादयः कृतास्तान्यपि
मांयामभवन्ति । इदं द्रव्यं on सौ. XII. 39; कात्यायनः । न्यासादिक ... दाप्यः स एव तत् ।
एवकारेण स्वपराधानमार्गमन्तपुत्रादियवन्तेदः । तथा च मांयामभवेत्तुरपिधिकारे मौलमः
विश्वम् ... रायेन । सर्वान्पुत्रादीन्निष्पादयन् । वि. चि. p. 26; चितुपरात्रे तु तद्वृत्तौ
न्यासः पुत्रादिना न दप्यः । जप्यातिरिक्त्यत्यादिति यथातिरिक्तपतिमाप्यातिरिक्तानां बलात्कार-
वृत्तिमानुक्तानां सर्वपामन्तद्वेवन्तेनान्येन दामेऽतिमसङ्गत् । जप्यादियदिशेषवचनाभावात् ।
विवादचन्द्र p. 27.

787. मलियुद्धति योग्यं यथ समधने नरः । तस्याप्यथ भवेद्धर्मः वशे विपयः समः ॥
नार्य V. 15. नार्य IV. 35 defines योग्य as a synonym of बाल (a minor up to
the 16th year) 'बाल आ षोडशवर्षाव्येत्यन्त इति अश्वले'. Gaut. XII. 34 and मनु
VIII. 148 employ the word.

depositee would be for loss of the minor's property. Vide section 27 of the Guardian and Wards Act (VIII of 1890) for the care required of a guardian⁷⁸⁸.

788. The British India Courts have been very much exercised over the question of the liability of ancestral property in the hands of the son for the obligations incurred by the father by his misconduct or embezzlement either as agent or manager for another or as guardian of a minor's property. It would follow from the passages quoted in n. 786 that ancestral property in the hands of the sons is not liable, acc. to some of our digest, if the father used or lost a deposit or loaned article by his negligence or mismanaged a minor's property. It is firmly established that the son is not liable for a debt incurred by the father in circumstances which would render the father liable to a criminal prosecution. Vide *Toshanpal Singh v. District Judge of Agra* 61 I. A. 350. In the latest case on the point, *Govindprasad v. Raghunathprasad* 41 Bom. L. R. 589 (F. B.) the exemption is carried further and it is recognized that as to the exemption of the son for 'avyāt-ahārīka' debts of the father, there are many cases which cannot be reconciled, that it is repugnant to good sense to construe ancient texts in the light of a system of criminal jurisprudence developed long after and that the correct rule is to hold that 'the son can claim immunity when he proves that the debt of the father was of a character which was illegal, dishonest or immoral (p. 602)' though difficult cases may arise in the application of this rule. It would be far beyond the scope of this work to cite or discuss the other numerous decisions.

CHAPTER XVII

ASVĀMIVIKRAYA (sale by one not the owner).

The different modes of the sources of ownership have already been referred to (H. of Dh. vol. II. pp. 130 ff) and will be referred to again under *dāyabhāga*. According to Nār. VII. 1 and Bṛ. (SBE vol. 33 p. 335 verse 2) when⁷⁸⁹ a person, who holds an open deposit, a sealed deposit, an article bailed for delivery to another, stolen property, an article borrowed for some festival, a pledge, or property lost by a stranger and found (by him), sells it in secret (or behind the back of the owner) it is to be considered as a sale by one who is not the rightful owner. Vyāsa has a similar verse. The word 'sells' is only illustrative and includes gifts and pledges. Similarly as most sales by one not the owner are clandestinely brought about, Bṛ. employs the words 'in secret' but even if the sale is effected openly the same consequences may follow. The same rules will apply to an article lost by the owner and found by a stranger. Kat. (612) provides⁷⁹⁰ that a sale, gift, or pledge, made by one who is not the owner, should be rescinded (by the king or judge). Manu VIII. 199 and Nār. (q. by Sm. C. II. p. 213, V. P. p. 291) and others say the same thing. Yāj. II. 168, Nār. VII. 2 provide that the owner is entitled to recover his property from the person that purchases from one who is not the owner. If the buyer purchases an article not in the open market, then he is liable for punishment; if he purchases from one who could have no means of possessing the thing sold (such as a slave without the master's consent) or for a very inadequate price or at a very unusual hour (at midnight or

789. विक्रीते वा परमप्ये नरं लब्ध्वापहृत्य वा । विक्रीयतेऽसमं यद्विज्ञेयोऽस्वामिविक्रयः ॥
नारद VII. 1: निक्षेपान्वाहितान्वासदृतवाचितचण्डकम् । उपोक्ष्य येन विक्रीतमस्वामी सोभि-
धीयते ॥ बृह. q. by स्मृतिच. II p. 213 अथ, प. p. 290: वाकितान्वाहितानां हृत्य
चाप्यस्य पद्वनम् । विक्रीयते स्वाम्यभावे स ज्ञेयोऽस्वामिविक्रयः । व्यास q. by अथ, म.
p. 195, अथ, प. p. 290.

790. अस्वामिविक्रये दानमापि च विनिकर्षेत । कात्या. 612 q. by the मित्र. on
पा. II. 168, पर. मा. p. 291, नि. र. p. 104. The अथ, म. p. 291 takes अस्वामि-
विक्रयं as one word 'अस्वामिना कृतं विक्रयम् । अस्वामिद्वयत्वं दानाद्यप्येवैव प्रकाश-
चर्यते', while अथ, म. p. 195 says अस्वामि is a separate word and an adverb.
The latter had to explain in this way in order to directly connect the absence
of ownership with all the three kinds of transactions.

the like) or from bad characters then he is to be punished as a thief (Yāj. II. 168, Viṣṇu Dh. S. V. 166, Nār. VII. 3, Manu VIII. 202, Br. in SBE vol. 33 p. 336 verse 11). Such a sale is a fraudulent one. If the buyer purchases (through ignorance) in market overt from one who is not the owner, he incurs no blame (no punishment), but he may have to hand over the article to the real owner (Viṣṇu Dh. S. V. 164-166).⁷⁹¹ The purchaser from one not the real owner can free himself by producing the vendor (called *mūla* in Manu VIII. 202, Br. and Kāt.) and should not attempt to conceal from whom he came by the thing, otherwise he would be liable to be punished equally with the vendor as a thief (Nār. VII. 4). Br. (SBE 33 p. 335 verse 3), Manu VIII. 201 and Yāj. II. 170 say that when the vendor has been produced by the vendee, then the latter is not to be proceeded against, but the vendor has to litigate with the real owner who has lost his property and when the vendor loses the suit he has to pay the price to the buyer and a fine to the king and the owner gets his property back.⁷⁹² If the vendor has gone abroad adequate time should be granted to the purchaser to produce him (Kāt. 615). The purchaser in order to escape blame (punishment) has to produce the vendor and if that cannot be done owing to the vendor's absence he has to prove that he purchased⁷⁹³ openly (Br. in SBE 33 p. 335 v. 4, Manu VIII. 202, Kāt. 615, 618-619). If he cannot do any of these two, then the purchaser would be liable to pay the price to the real owner as claimed and a fine to the king. Manu VIII. 198 prescribes that one who sells without being the owner but being a member of the owner's family should be fined 600 paṇas, while a vendor unconnected with the real owner's family should be dealt with as a thief. The same rule applies to a

791. अज्ञानान् प्रकाशं यः परद्रव्यं कीर्णयान् तत्र तस्यादोषः । स्वामी द्रव्यमाप्नुयाम् । यद्यप्यज्ञानं हीनमूल्यं च कीर्णयान् तदा केता विक्रेता च चोरवत्प्राप्तौ । निष्पुण्यमर्थश्च V. 164-166; अन्तर्द्वये बहिर्ग्रामाजिज्ञायामसतो जनात् । हीनमूल्यं च वक्तीर् ज्ञेयमा-दुपचक्रियः ॥ बृह. q. by प. म. p. 291, वि. र. 107, परा. मा. III. 293.

792. मूले समाहूते केता नाभिपोषः कथंचन । मूलेन सह वादस्तु नातिक्रम्य विधी-क्ये ॥ बृह. q. by मिता. on या. II. 170, while परा. मा. III. 293 and स्मृतिच. II. p. 215 attribute it to व्यास. विक्रेता दूषितो यच्च हीयते व्यवहारतः । केने राज्ञे मूलद्रव्यो न्य-यात्प्रामाण्ये वनम् ॥ बृह. q. by परा. मा. III. p. 293, स्मृतिच. II. p. 215.

793. प्रकाशं वा कथं कुर्वाणमूलं वापि समर्पयेत् । मूलानयनकालस्तु देपो योजन-संरूपया ॥ कात्या. q. by मिता. on या. II. 170 (reads देवस्तवाधमसंरूपया), अपराधे p. 376, वि. र. p. 101; असमाहार्यमूलस्तु कथमेव निशोधयेत् । विशेषिते कथे राज्ञा न वक्तव्यः स किंचन ॥ अनुपस्थापयन्मूलं कथं वाचयिष्येति ॥ यथाभिवार्गं प्रमिते धनं द्वाप्तो दूने च सः ॥ कात्या. 615-619 q. by मिता. on या. II. 170, वि. र. pp. 106, 108, प. म. pp. 196-197.

vendor selling another's article through ignorance or mistake and one doing so with full knowledge. The person who has lost a chattel and claims it from the finder is described as *nāṣṭika*⁷⁹⁴ in Kauṭ. III. 16, Mam VIII. 202, Kāt. (614) and elsewhere, the word being derived from *naṣṭa* (what is lost). The idea is that openly purchasing an article in the presence of a number of people for an adequate price negatives fraudulent intent and leads to the inference of a purchase in good faith and such a purchaser even though he may have to part with the chattel to the real owner when the latter proves his title, incurs no blame and is entitled to recover from the vendor, if he has to surrender the article, the price paid by him. When a person claims a lost article as his he has first to prove his title and possession by evidence (such as that of his kinsmen or a document &c.) and that he had not sold or donated or abandoned it; ⁷⁹⁵ after he has proved his title the purchaser is called upon to prove his purchase as honest by evidence i. e. by producing the vendor or by showing that he purchased openly and for adequate price (Kāt. 613, Yāj. II. 170). When this is done the purchaser escapes blame but has to surrender the article to the true owner. Kāt. (616) adds ⁷⁹⁶ that in the case of 'asvāmi-vikraya' no other means of proof whether divine or human (except the evidence of witnesses such as kinsmen) is declared to be proper. Acc. to the V. P. p. 293 other evidence and even ordeals may be admissible in sale without ownership, but the Sm. C. p. 216 and the Madanaratna say that on account of the express words of Kāt. this is not possible. If the owner who alleges the loss of an article fails to prove his title and prior possession he has to pay a fine to the king equal to $\frac{1}{4}$ th of the price of the article. Kāt. (620) and Kauṭ. (III. 16) state that on failure to prove his title the person claiming ⁷⁹⁷ the article as his should be fined as a thief, in order to deter (others) from taking undue advantage (i. e. preferring false claims). Kauṭ. ⁷⁹⁸ III. 16 and Yāj. II. 169

794. महमनेषते नाष्टिकः । नष्टमवधारितार्थे तस्मिन् कृते यज्ञाद्विवाहवर्षिकोऽप्युक्तः । महे अपोऽजसमस्तैर्वा । मेधाः on मनु VIII. 202. The sūtras referred to are पणिनि V. 2. 113, V. 4. 38 and V. 1. 109.

795. नाष्टिकस्तु प्रकुर्वीत तद्वै न ज्ञातुभिः स्वयम् । अदुस्तरपक्षनिर्णीतं कुत्वा स्वं लभेत धनम् । कात्या. 614 q. by अपराकं p. 777, वि. र. p. 104. स. वि. p. 306.

796. नकारो च ग्रथं कुर्यात्साधुभिर्ज्ञातिभिः स्वयम् । न तत्रान्य किंवा योका वैविको न च साधुषी । कात्या. 616 q. by अपराकं p. 717, परा. मा. 326, वि. र. p. 106.

797. यद्वि स्वं नैव कुर्वते ज्ञातिभिर्नाष्टिको धनम् । पतङ्गनिनिवृत्त्यर्थं चोरवदप्यहमस्मि । कात्या. 620 q. by अपराकं p. 777, वि. र. p. 103, परा. मा. III. p. 297.

798. नष्टापहृतमासाद्य स्वामी धर्मस्थेन बाहयेत् । देशकालातिवृत्तौ वा स्वयं कुर्यात्कोपहरेत् । अर्थशास्त्र III. 16.

provide that when the real owner finds his lost article in the hands of a stranger he should get him apprehended by the royal officers (such as *chauroddharagika*, acc. to Mit.), but that if the owner thinks that much time will be lost or distance will have to be traversed (for going to officers) he should himself seize the person and bring him before the court. The Mit. explains that the buyer should have the seller arrested and, if the seller is dead or gone abroad, that he should hand over the article to the real owner. Where a purchase has been made in the midst of a row of traders to the knowledge of the king's officers, but from a vendor whose habitation was unknown or where (after the purchase) the vendor dies, the real owner (of the thing sold by one not the owner) will recover his own property after paying half the price to the purchaser, since the rule of justice in such a case so requires, because to purchase from one (whose habitation is) not known is a fault (in the purchaser) and not taking proper care (of one's goods) is also a fault in the real owner (Br. in S. B. E. vol. 33 pp. 335-36 verses 7-9 or Kāt. 621-623)⁷⁹⁹. Marici (q. by Aparārka p. 775, Sm. C. II. p. 217) has similar provisions. Br. (S. B. E. vol. 33 p. 335 verse⁸⁰⁰ 6) provides that in a suit where there is no evidence the king shall take into consideration the character of the litigants and give a decision according as the credibility of the parties is equal, greater or less.

As regards articles lost and found by the king's officers, vide above (pp. 175-176).

799. वणिगीधीपरितः विज्ञातं राजपुरुषैः । अविज्ञाताश्चपाद् जीतं विक्रितं यत्र वा शुभः ।
स्वामी दुर्बार्धमूल्यं तु यद्विक्रीतं स्वकं धनम् । अर्धं द्विगोरपहृतं तत्र स्वाद्वयवधारतः ॥ अविज्ञात-
कथो दोषस्तथा चापरिपालनम् । एतद् द्वयं समाकथ्यते द्वयवहानिकरं धुषे ॥ बृह., acc. to
अपरार्क p. 775, कुत्सुक on मनु. VIII. 202 (the first two only); and कात्या
acc. to स्मृतिच. II. pp. 216-217, परा. स. III. pp. 297 and 300, स्प. p.
pp. 295-296. Law helps the vigilant. The rules under 'asvāmivikraya'
are based on the doctrine that no one can confer a better title to the goods
sold than he himself has (vide section 27 of the Indian Sale of Goods Act IX
of 1930). The verses recognise an exception in cases where both purchaser
and the real owner are equally at fault.

800. यमापहरीनपादे तु पुरुषापेक्षया शुभः । सगन्धूनाधिकतेन स्वयं कुर्वाद्धिमिष्यम् ॥
बृह. q. by स्मृतिच. II. p. 216, मि. र. p. 108.

CHAPTER XVIII

SAMBHŪYA-SAMUTTHĀNA ⁽¹⁾

(A joint undertaking, partnership).

Where traders or others (like actors, musicians or artisans) carry on a business jointly it is termed a partnership (Nār. VI. 1 and Kāt. 624).⁸⁰² Br. (SBE vol. 33 p. 336 verses 1-2) says that a man should carry on a joint business with other persons of good family, that are clever, active, intelligent (or educated), familiar with coins, skilled in (controlling) expenditure and income, honest and valiant (or enterprising) and that joint undertakings like trade should not be carried on by prudent men with persons (partners) who are weak or lazy or afflicted with disease or are unlucky or destitute (of money).⁸⁰³ The meaning is not that all the above qualities must exist in all partners, but that according to the nature of the undertaking some of these qualities will be absolutely necessary. Nār. VI. 2-3, Yāj. II. 259, Br. (SBE vol. 33 pp. 336-337 verses 3 and 4) prescribe that the expenses, loss, profit or work of those who jointly lend gold, grain or liquids shall be according to the capital put in by each.⁸⁰⁴ The duty of each is to act honestly towards the others, whether they are present or absent,

801. सम्भूय is the indeclinable past participle of the root भू with सम् and means 'having formed together or come together' and सम्भूयान् means 'undertaking'. So the two words mean 'undertaking in which are joined together' (labour, capital or both).

802. सम्भवेतास्तु ने केचिच्छिन्निनो वणिजोऽपि वा । अविभज्य द्रव्यमूर्तेः प्राते तद्व कले सम्भूय ॥ कात्या 624 q. by अपराके p. 832, परा. भा. III. p. 304.

803. कुलीनदृशामलसैः पात्रेर्माणकवेदिभिः । अक्षय्यपद्मैः श्रुचिभिः पुरैः कुर्वीतसा-
क्रियाम् ॥ अक्षय्यपद्मसरोमातमन्दुभागनिराभयः । वाणिज्याद्या सर्वतस्तु न कर्तव्या कुपैः
क्रिया ॥ बृह. q. by स्मृतिक. II. p. 184, अपराके pp. 831-832. 'सहक्रिया वाणि-
ज्यकृषिभित्तपकतुसर्वास्तस्यैवाक्रियानिर्णयः । तत्र वाणिज्यक्रिया नाजकवेदिभिराक्षय्यपद्मैः
सम्भूय कार्या । कृषिक्रिया तु अक्षय्यपद्मैः । शिल्पक्रिया संवीतक्रिया च तद्वैः ।' स्मृतिक.
II. p. 184.

804. यथेवं कुर्वतो वे तु हेमधातुवरादिना । समभूनाजिकैरशोढांभस्तेषां तथाविधैः ॥
समोऽभूनोऽधिको वातो येन क्षितस्तथैव सः । यथे द्रव्याकर्म कुर्वाणाम् रुद्रांत चैव हि ॥ बृह.
q. by. स्मृतिक II. p. 185, य. य. p. 298. अपराके p. 832 ascribes the first to
कात्यायन.

in sales or purchases of various commodities.⁸⁰⁵ Br. (SBE vol. 33 p. 337 verses 5-7) provides that whatever⁸⁰⁶ property one partner may give (or transfer), being authorised to do so by the rest, or whatever document (or transaction) he may cause to be executed, all that is to be deemed as done by all partners; the partners themselves are declared to be the judges (the deciding persons) or witnesses among themselves in a doubtful case and in case of fraud, provided they are not already at feud among themselves. It follows from this that by entering into an agreement of partnership, each partner agrees that he submits to the decision of the other partners in cases of doubt. If any one from them is found out to have practised fraud on the others in sales or purchases he should clear himself by special oaths or ordeals. Yāj. II. 260, Nār. VI. 5,⁸⁰⁷ Br. (SBE vol. 33 p. 337 verse 9) provide that each partner is responsible to make good what has been lost through his negligence or in consequence of his acting against the instructions of the others or of his acting without their authority or consent. If any one of the partners saves partnership property from act of God or the king or thieves (or similar calamity) by his own exertions he is to be awarded (as his special share) one tenth of the property saved (Yāj. II. 260, Kat. 631,⁸⁰⁸ Nār. VI. 6). If any partner is crooked or fraudulent the rest may expel him without giving him any profit; a partner who is incompetent to work (personally) should get the partnership business done through another (Yāj. II. 265). Yāj. II. 264 and Nār. VI. 7 and 17-18 state that if one partner

805. समसमसमर्गं वाजज्जपन्तः परस्परम् । नानापण्यानुसारणे यदुक्तं ऋषिकवी ॥
प्यास q. by स्तुतिच. II. p. 183, अपराक p. 832. Compare sec. 9 of the Indian Partnership Act (IX of 1932) about the duty to be just and faithful.

806. बहुर्वा संतो पस्तु द्वावेको धनं नरः । कारणं कारवेद्वापि सर्वेरेव कुर्वं भवेत् ॥
परिहृताः साक्षिणस्तु न एतेकाः परस्परम् । सन्दिग्धेषु वज्जनाथो न चेद्दिद्वयसंज्ञताः ॥ यः
कश्चिद्वज्जफलेषां विज्ञातः ऋषिकवे । उपयैः सोपि शोभ्यः स्वात् सर्ववादेवर्षं सिधिः ॥
बुह. q. by स्तु. न. p. 200, नि. र. pp. 113, 123, स्तु. न. p. 299; अपराक p. 832 has
all these, ascribes the first to कात्या. and reads क्वरेव कारयेत्. What is meant
is that when one partner raises an objection they have to decide what is
to be done by a majority (and so they are judges in their business). Vide
sections 12 and 18 of the Indian Partnership Act as to the decision by the
view of majority and as to agency of partners.

807. यमावावाजिनिं द्वाप्यः प्रतिनिद्वक्तुं च यत् । असन्दिग्धं यदुक्तं सर्वसम्भूतका-
रिभिः ॥ नारद VI. 5.

808. चोतः सतिशद्वेदेव्यं पस्तु समाहरेत् । तत्प्राप्तो द्वायो द्वेकं सर्वव्यवेषं
सिधिः ॥ कात्या. 631 q. by परा. मा. III. 303, नि. र. p. 114.

goes to a foreign country and dies, his share should be taken by his heirs (son &c.) or by his agnates or cognates; in default of these the other partners may take it and in default of them the king may take it after waiting for ten years to see whether any heir or claimant turns up. Kātyāyana⁸⁰⁹ states that in the case of artisans who together carry out some work, those among them who are directors of new methods get four shares, those who are adepts in the craft three shares, those who have studied the craft two shares and the apprentices only one share. Whatever is given to strangers by all together (i.e. by the partnership firm) should be claimed back by the firm as such; any single partner should not claim it; if he does so he will lose his share of the profit⁸¹⁰. Some rules are prescribed by Br. that among dancers, singers and musicians, the singers get equal shares; while those who beat the tune only get half share each; similarly in the joint construction of a mansion or a temple the head of the artisans gets two shares. An artisan⁸¹¹ (*śūdrin*) is one who manufactures or works upon gold, silver, yarn, wood, stone and hides or one who has mastered one of the (64) arts. If a king has ordered a band of adventurers from among his subjects to make a plundering expedition in enemy country, Br. (in V. R. p. 125) and Kāt. (633-635)⁸¹² prescribe that the king gets one tenth ($\frac{1}{10}$ acc. to Br.), the leader gets four shares in the remainder, the valiant among his followers three shares, the more capable two shares and the rest one each and that if any one of them is caught the money for his ransom should be contributed by all according to their shares. When no agreement is made as to shares in property by traders, husbandmen, thieves and artisans similar rules apply⁸¹³.

809. शिल्पकारभिर्लुब्धस्य आचार्याश्चेति शिल्पिनः । एकद्वित्रिचतुर्भोगान्द्वेभ्यस्तुल्यं यथा-
स्तरम् ॥ कात्या. 632, q. by व्य. म. p. 203, अपराकं p. 838, वि. र. p. 124.

810. समेतैस्तु पट्टते प्रार्थनीयं तथैव तद् । न याचेत च यः कश्चित्प्रभास्य परिहीयते ॥
बृह. q. by अपराकं p. 833, वि. र. p. 123, व्य. म. p. 300.

811. शिल्पपट्टपशुशार्ङ्गो काष्ठपलाणचर्मणात् । संस्कारां च कलाभिः शिल्पी चोक्तो
मनीषिभिः ॥ बृह. q. by वि. र. p. 124, व्य. म. p. 304 (reads शिल्पसकुट्टः).

812. परराज्ञादृतं यत्प्रयाच्यैरैः स्वाम्याज्ञया हृतम् । राज्ञो द्वांशस्तुद्रुधाय विभजेत्स्व-
भाविति । चोरानां तुरगधृतस्तु चतुर्योशस्त्वो हृतम् । चुर्योशस्त्वोऽन्तर्गो द्वौ शेषास्त्वैकमेव
वा ॥ तेषां चैव्यद्वतानां यो ब्रह्मणे समवस्तुधात् । तन्मोक्षार्थं पट्टत्तं वेदपुरते यथाज्ञतः ॥
कात्या. q. by स्मृतिच. II. p. 189, व्यक. नि. p. 286, परा. मा. III. 311,
व्य. म. p. 305.

813. गणिकां कर्मकाणां च चौरानां शिल्पिनां तथा । अभिप्रेत्यांश्चकुर्यात् सर्वेषामेव
विशेषः ॥ कात्या. q. by व्य. म. p. 305, परा. मा. III. p. 312, वि. र. p. 126.

It is interesting to note that the ancient Dharmasūtras of Gautama, Āpastamba and Baudhāyana are silent about partnerships, that Manu (VIII. 206-210) lays down rules about the distribution of fees among the priests at a sacrifice and that in one verse (VIII. 211) he remarks that the same principles are to be applied in all matters where men work conjointly (i. e. each is to be paid according to the importance and volume of the work he does). The rules about sacrificial priests in Manu are: If a priest chosen to do work in a sacrifice abandons his work a share only of the fee in proportion to the work (done) shall be given to him by those conjointly working with him; If a priest leaves after the fees are distributed (as at the time of midday extraction of Soma in the great sacrifices like Jyotiṣṭoma) then he keeps the whole of it and shall cause the remaining work to be performed by another (who will be paid by the sacrificer, acc. to Medhātithi). When specific fees are prescribed to be paid to individual priests at the performance of the several parts in a complicated sacrifice, the individual priests are to receive them and all are not to participate; as for example, the *adhvaryu* takes the chariot, the *brahmā* priest takes the horse in *Agnyādhāna*, the *hotṛ* also takes the horse and the *udgātṛ* the cart used in purchasing the soma plant. The four chief priests are entitled to one half of the fees, the first group of their assistants will get half of what the chief ones get, the 2nd group $\frac{1}{4}$ and the fourth $\frac{1}{8}$. Nār. VI. 10 and Br. (in V. R. p. 120) state that sacrificial priests are of three kinds viz. one hereditary and honoured by the ancestors of the sacrificer, one appointed by the sacrificer himself and one who performs the functions of his own accord through friendship and that (VI. 9 and 11) if an officiating priest forsakes a sacrificer who is free from any fault and who has caused no harm or if a sacrificer abandons a priest who is faultless, they both shall be punished but this does not apply to the third kind of priest. Śāṅkha-Likṛita, as quoted in V. R. pp. 117 and 120-121 and Sm. C. II. p. 188, give elaborate rules about sacrificial priests dying or leaving work and the fines to be imposed on them. Kaut. III. 14 lays down rules for the receipt of fees by priests when they leave off at different stages of such solemn sacrifices as the *Agniṣṭoma* and also when the sacrificer dies without completing the sacrifice. The Vy. Nir. (pp. 284-285) quotes a few sentences from Kaut. III. 14.

The above shows that in the times of the ancient sūtras, secular partnerships had not attained sufficient importance and

even in the times of the Manusmṛiti almost the same was the case. While Manu extends the rule about the distribution of fees at a sacrifice⁸¹⁴ to secular joint undertakings, Yāj. (II. 265) extends the general rules about the partnerships of traders to sacrificial priests, husbandmen, craftsmen (like carpenters, dancers &c.). That shows that complicated sacrifices requiring a large number of priests had become rare in Yājñavalkya's days and partnerships of traders and artisans had assumed great importance.

814. In solemn sacrifices like the *śvayāgyajñam* there are four principal priests (*होतुः, अध्वर्युः, उद्गातुः, ब्रह्मन्*) and each of the four has three assistants. If 100 cows in all are to be distributed as *śakṣināḥ* the four principal priests get 48 in all (i. e. 12 each), the first group of four assistants called 'ardhinah' in the Vedic passages to be quoted below and in Manu VIII. 210 (viz. *नैवावधनः, प्रतिपरधातुः, ब्राह्मणाच्छमित्य, यस्मोतु*) receive one-half of 48 (i. e. 24, 6 for each), the next group of four called 'one-thirders' (*तृतीयिनः*) in both get 16 (4 to each of *अष्टाशकः, नेतुः अग्नीध्रः, प्रतिहर्तुः*), the last group of four called 'one-fourth holders' (*पादिनः*) get 12 in all (3 to each of *वापस्तुन्, वज्रेतुः, धीतुः, सुब्रह्मन्*). Vide Mit. on Yāj. II. 265, Kullūka on Manu VIII. 210, V. R. p. 119, V. P. p. 301. The *śāntiśāstra* X. 2. 25 says 'पञ्चारम्भे द्वादश द्वादशाद्येभ्यः षट्षष्टितीयेभ्यश्चतस्रश्चतस्रस्तृतीयेभ्यस्तिस्रस्तिस्र इत्यरेभ्यः ॥'. The question of distribution is agitated in Jai. X. 3. 53-55, the *prima facie* (*pūrvapakṣa*) view being that the cows should be equally divided among all the priests or according to the work done, while the conclusion is that since the *śraṇi* employs the words *अधिनः, तृतीयिनः* and *पादिनः* as if it was a well-known matter (*anuvāda*), the cows are to be distributed as in Kāt. Ś. sūtra above. The Vedic passage is *अध्वर्युर्गृह्यति दीक्षयित्वा ब्रह्मण्यं दीक्षयति तत उद्गातारं ततो होतारम् । ततस् प्रतिपरधाता दीक्षयित्वा अधिनो दीक्षयति । ... ततस् नेतुः दीक्षयित्वा तृतीयिनो दीक्षयति । ... ततस्सुज्येता दीक्षयित्वा पादिनो दीक्षयति ।*

CHAPTER XIX

DATTANAPAKARMA (resumption of gift).

This title is also called *dattāpradāmika*⁸¹⁵ (lit. that which is concerned with the non-delivery or resumption of a gift). Nār. VII 1 defines it as that title where a man desires to resume what has been given by him because it has been improperly (in a manner opposed to law) given by him. Nār. (VII 2) divides this title into four topics viz. what may not be given, what may be given, what are valid gifts and what are invalid gifts. Nār. VII. 3-5 and Br. (SBĒ vol. 33 p. 342 verse 2) state that there are eight things that cannot be given (*adeya*) viz. an *ancūta*, a deposit, *yūctaka*, a pledge, property jointly owned with others, a deposit, son and wife, the entire property in the case of one who has offspring, and what has been already promised to another. Vide Kauṭ. III 16, Yaj II 175⁸¹⁶ for a similar but more compendious statement, and Kāṭ. 638. These cannot be given either because they are not one's absolute property or because the gift of them is forbidden by the sages. In the case of even those who hold that one has ownership over one's son or wife, the gift of them is not possible because it is forbidden, just as though one owns rice, *yaṁsa* and *māsa* beans, one cannot make offerings of *māsa* because the veda prohibits their use in the words 'ayajñiṣyā vai māsaḥ' (q. by Śabara on Jai. VI 3, 20). So son and wife cannot be given on account of the prohibition in the smṛtis. The general rule of what may be given is stated

815. मेधातिथि on मनु. VIII. 214 explains it as अपक्षिप्त क्रियापापः तस्य तत्प्राप्तिविधः । दानमेवं न चक्षितं भवति । एवैव दाने निमित्तीति वाच्यं । अथ निमित्तप्राप्तिव-
ज्जने धर्मो न नश्यतीति नैषा अङ्गुली कर्तव्या । अथ एवात्र धर्मो यत्र क्षीयते दाने न प्रत्यादौक्ये ।
So acc. to this दत्तप्रदानपाकर्म means 'not improper abstraction of what is given or promised to be given.' The *Smṛta* on Yaj. II. 175 explains both दत्तप्रदानपाकर्म and दत्तानपाकर्म as follows: दत्तस्य अप्रदाने पुनर्हरणं परिमज्जानाकरो तद् दत्ताप्रदानिकं नाम पावहारपदम् । ... दत्तस्य अनेपाकर्म अनुनरादाने यत्र दानाकरो विनादप्ये तद् दत्तानपाकर्म. Acc. to this दत्तानपाकर्म means 'that in which what is donated cannot be taken back because the gift is according to law' (also impliedly the converse of it).

816. सर्वस्य पुत्रद्वारमाज्जने यदाप्राप्तुमिच्छति तदाप्राप्तुः । अथैतत्तत्तत् III. 16. सामान्य-
पुत्रद्वाराभिर्नैवैतन्मात्रमात्रमात्रम् । प्रतिकूलं तदाप्राप्तुमिच्छते तदाप्राप्तुः । इह. q. by
स्मृतिच. II. 189, य. प. p. 306; similar verses of Nār. VII 4-5 and Dakṣa III.
19-20 have been quoted in (H. of Dh. vol. II. p. 350 n. 2005).

by Yāj. II 175, Nār. VII 6 and Br. (SBE 33 p. 342 verse 3), Kāt. 640 viz. whatever is absolutely one's own excepting that required for the maintenance of one's family may be given.⁸¹⁷ Manu (XI 9-10), Nār. VII 6 and Br. (quoted in H. of Dh. vol. II pp. 850-851 n. 2007) condemn those who stint their family or servants in order to be charitable to others and say that he who does so would incur sin. Manu XI 7 (=Nār. VII 7), Vas. VIII 10, Yāj. I 124, Viṣṇu Dh. S. 59.8 prescribe that he alone who has property sufficient to provide for three years' maintenance for those whom he is bound to maintain or has more wealth than that may drink *soma* i. e. may engage in a soma sacrifice (which costs much).

Nār. VII 8 states that there are seven kinds of *datta* gifts, i. e. gifts or transfers that cannot be resumed because they are made by a person in full possession of his faculties and of things that belong to him absolutely and are not forbidden. They are: the price paid for goods bought, wages, what is paid for pleasure (derived from dancing, singing, wrestling), a gift through affection, a gift made in gratitude, money paid to a bride's kinsmen, and gifts for spiritual or charitable purposes. Acc. to Br.⁸¹⁸ (SBE vol. 33 p. 343 verse 8) there are eight kinds of valid gifts. Nār. VII 9-11 mentions sixteen kinds of invalid gifts, which have already been set out (in H. of Dh. vol. II p. 887 where Gaut. V. 22 that specifies some invalid gifts has also been cited). Vide Kāt. 647. The difference between gifts of *adeya* and *adatta* gifts is this. In the first class of cases, the gifts being forbidden are entirely null and void, while *adatta* gifts are those that are voidable and may be set aside by the court on the application of the donor himself, because, of the incapacity of the donor due to intoxication, lunacy, old age, minority, mistake etc. Kāt. 646 and Kaut. (III 13) state

817. सर्वसं युहवर्जं तु कुटुम्बभरणायिकम् । यद् दत्तं तत्सर्वं देवमेदये स्वादृशो-
न्मथा ॥ कात्या. 640 q. by परा. मा. III. 214, वि. र. p. 129, स. वि. p. 283.
Kāt. prohibits the gift of a house if a man owns only one.

818. भूया तुष्टया दण्डमूर्खं स्त्रीशुक्लमुपकारिणं । भद्राशुग्रहणे यौत्वा दत्तमद्विषं
विदुः ॥ बृह. q. by स्मृतिच. II. p. 103. कात्यायन 644-645 explain भूति and दण्डमुपकार
occurring in मास्य and बृह., the first being a reward for finding out a lost
article or an unknown offender and the second being a reward for protec-
ting a man from danger or for guarding the donor's property when he
was a minor or affecting some object desired by the donor (such as his
marriage &c.)

that if a man⁸¹⁹ is in danger of life and promises the gift of all his property to whomsoever may save him, he may renege from the promise and pay only what an expert or arbitrator may award. Kāt. (650-651) defines *utkoca* (bribe)⁸²⁰ as what is obtained in these ways viz. by giving (or threatening to give false) information about a person as a thief or a felon, or as one who breaks the rules of decent conduct, or as an adulterous person, or by pointing out those who are of bad character or by spreading false reports about a person. He further provides that a person offering the bribe should not be fined, but the intermediary may be fined and if the person accepting the bribe has been appointed to an office by the king he should be made to return the bribe and pay a fine eleven times as much to the king. But Kāt. adds that where a person not holding a public appointment obtains some gratification for work done, he would not be held guilty and would not have to return what he received as a reward or in gratitude. Hārta holds out⁸²¹ other-worldly evil consequences for not actually delivering what is promised or for resuming what has been already delivered as a gift viz. the person doing so falls into Hell and is born as one of the lower animals and adds that what is promised as a gift for a religious purpose in so many words but is not actually delivered becomes a debt in this world and the next i. e. the king should make the promisor give the

819. वाणस्तैश्चमायकं यो सामुत्तारयेद्वितः । सर्वस्य तस्य दास्यामोत्तुकेषु न तथा भवेत् ॥ कात्या. 646 q. by अथर्वकं p. 781, वि. र. p. 134, स्मृतिच. II. p. 193. नदीनिगज्याशालेनपालोपबद्धः सर्वस्ययुक्तद्वारात्मदानेनार्तक्षतारमाहूय निस्तीर्णः कुशलपदिसं वेतनं दद्यात् । तेन सर्वकारं दानादुपश्रया व्याकृपाताः ॥ अर्थशास्त्र III. 13.

820. स्तेनमाहसिकोद्भूतपारजातिकर्षसनात् । दर्शनाद् वृत्तमदस्य तथासत्यपार्त- नात् । प्राप्तमेतत् पत्तिकर्तुं तदुक्तोच्चारयत्युच्यते । न दाता तत्र दण्ड्यः स्यान्मापस्यश्चेन दोषपाकः । निवृत्तो यस्तु कार्येषु स चेदुक्तोच्यमानुपात् । स वाणस्तैश्चनं कुर्वन् दमर्थ- कादुपश्रयिकम् ॥ अनियुक्तस्तु कार्यार्थयुक्तोच्यं यमस्याप्यात् । कृतमत्युपकारार्थं तस्य दोषो न विद्यते ॥ कात्या. 650-653 q. by स. वि. 286, अथर्वकं 782, परा. मा III. 320, च. म. p. 312, च. म. p. 205. The Indian Penal Code, section 116 (illustration a) read with sec. 161, makes one who offers a bribe to a public servant punishable as an abettor. The ancient Indian law exempting the offeror from punishment would appear to be more reasonable from certain points of view.

821. प्रतिश्रुतार्थादानेन दसस्यपण्येदनेन च । विविधाश्रकान् पाति त्रिपंग्वेनौ च जायते ॥ वाच्येन यदतिज्ञाते कर्मणा नोपपादितम् । कर्णं तद्वर्मेसंयुक्तमिह लोकं परच च ॥ शारीर q. by च. म. p. 310, विवादचन्द्र p. 36, स्मृतिच. II. p. 192 which remarks 'कर्णवद्विपयमिधामेन अर्थादानदायको दायो दण्ड्यश्चेत्युक्तम्'. स. वि. p. 285 ascribes the first verse to कात्या. and reads 'कर्णकोटिदशैर् नवस्तिपंग्वेनौ'.

promised gift and should inflict a fine. Kāt. (642) provides⁸²² that a man who having voluntarily promised a gift to a brāhmana does not deliver it should be made to render it as a debt and should be awarded the lowest amercement and further (verse 566) that if a man promises a gift for a religious purpose whether in good health or in disease, his son (or other heir) should be made to pay it if the promisor died without actually delivering it. These verses show that in two cases gifts though not completed by delivery of possession were enforced by ancient Indian courts viz. when the gift was promised to a brāhmana or when the gift was declared to be made for a religious and charitable purpose. The last verse contains the beginnings of the idea of a will, since the mere declaration of the intention of a man to give for a religious purpose is made enforceable after his death against his son or heir. But this germ could not evolve into a full-fledged law of testamentary succession on account of the practice of adoption, the requirement that a gift must be accompanied by present possession and the incidents of the joint family on account of which no single member could alienate family property except for legal necessity and which involved the doctrine that on the death of a member his rights ended and passed by survivorship to other members. Br. expressly states this.⁸²³ But a gift though promised need not be paid or carried out if the promisee turns out to be an irreligious man (Gaut. V. 21). Nār. VII. 12 and Br. provide that he who enjoys an invalid gift and he who makes a forbidden gift are both to be punished by the king.⁸²⁴

In H. of Dh. vol. II. p. 841 it has been stated that gift consists in the cessation of the ownership of the donor in a thing and creating ownership in another. This latter is effected by acceptance (*śikṣā*) by the donee. Acceptance may be made mentally, vocally or physically. For the formalities accompanying a gift such as sprinkling water on the thing donated and the

822. स्वेच्छया यः प्रतिभूतव आह्वयान् प्रतिग्रहम् । न दद्यादणवदाप्यः प्रमत्तपुत्रै-
साहसम् ॥ कात्या. q. by इत्युत्तिच. II. p. 192, स. नि. p. 285, स्व. प्र. p. 310; स्वस्थे-
नार्तेन वा देवे आर्तिर्धर्मकारणम् । अद्वया तु युते द्यापस्तस्मिन्ना वाच संज्ञकः ॥ कात्या-
q. by वि. चि. p. 16, स्व. प्र. p. 313, स. नि. p. 287, विद्यावन्द्य p. 37; प्रतिभूतवा-
पदातारं सुवर्णं दान्यवेक्यताः । मत्स्यपुराण 227. 8 q. by स्व. प्र. p. 310; प्रतिभूतवाप्यधर्म-
संज्ञकाय न दद्यात् । मी. V. 21.

823. मनुर्वर्मिति यद्वत् न तत्सवत्सवार्थं भवेत् । तेनेदानीमवृत्तान्मनुते रित्रिधमसापेक्षं ॥
बृह. q. by स्व. नि. p. 298.

824. अद्वत्तभोक्ता दण्ड्यः स्वाध्यायदेवपदापकः । बृह. q. by स. नि. p. 288.

offering of a *dakṣiṇā* to the donee, vide H. of Dh. vol. II. p. 855. Some writers like Jīmūtavāhana dispute the statement⁸²⁵ that acceptance is necessary to constitute a gift. The *Dāyabhāga* states that by the mere relinquishment of a thing by the donor (i.e. by the activity of the donor himself) the ownership of the thing passes to the person intended as the donee, that the ownership of the other man does not arise by acceptance, that though ownership in the donee does arise by the mere activity of the donor, yet acceptance (*svikāra*) which is an activity of the donee makes the thing donated capable of being disposed off by the donee as he likes on account of his idea 'this is mine'. The *Dāyabhāga* indulges in casuistical reasoning in support of its view, which it is not necessary to set out here. But the remarks of the *Dāyabhāga* are not satisfactory, since it does not adequately explain what is to happen if the intended donee refuses the gift. On its hypothesis ownership has passed to the donee without acceptance being necessary. If the donee refuses, or dies without accepting, who is the owner? Can it be said that the thing becomes the property of whosoever first takes it up and that the donor cannot prevent a third person taking it up? The V. P. pp. 426-428 severely criticizes the *Dāyabhāga* for its views.

825. इष्टं च लोकेऽपि दाते हि चेतनोऽपि विक्रयप्राप्तये दातृत्वाभावात्संप्रदानस्य द्रव्ये स्वामित्वम् । न च स्वीकरणात् स्वत्वं स्वीकर्तुरेव दातृत्वापत्तेः । ... उत्पन्नमपि स्वत्वं संप्रदानव्यापारेण ममेदमिति ज्ञानेन परोक्षव्यवहारायै क्रिया इति स्वीकाराव्यावृत्तिः । दापभागे 1. 21-24 pp. 13-15.

CHAPTER XX

VETANASYĀNAPĀKARMA, ABHYUPETYĀSUSRŪSA AND SVĀMIPĀLAVIVĀDA

(Non-payment of wages, non-rendition of service, dispute
between master and herdsman).

The question about the payment or non-payment of wages to those whose services are hired for work is dealt with under this title (Nār. IX, 1). According to Br. there⁸²⁶ are three titles of law in which the question of hiring enters, viz. *abhyupetyā-susrūṣā*, *vetanasyānāpākarma* and *svāmipālavivāda*. Manu and Kaut. do not treat of the first of these three. Here *vetanasyā-nāpākarma* will be first dealt with, then *abhyupetyāksusrūṣā* and *svāmipālavivāda* will be separately treated of. All these three topics are concerned with masters and servants or employers and employees. The rules are different according as the contract of service is for a fixed term or for an indefinite period or is for executing a definite piece of work and according as the rate of wages or the hire is fixed beforehand or is not fixed. We have further to remember that the rules are spread over a large period i. e. from about 6th century B. C. to about 500 A. D. (from Gaut. and Āp. to Br. and Kāt.). The rules deal with the liabilities of both masters and servants. Nār. IX, 2 states that the wages agreed upon may be paid at the beginning, in the middle or at the end of the work undertaken. But when no wages are settled beforehand Nār. IX, 3, Yāj. II, 194, Kaut. III, 827, 13 provide that the (agent of a) trader, the cowherd, the husbandman should receive a tenth part respectively of the profit, of the milk and of the crops. This latter according to the Sm. C. II p. 201 holds good where the crops are raised easily. But Br.

826. अदेयादिकमाकर्षणं भूतानामुच्यते विधिः । अशुभ्रपाभ्युपेत्यैतत्पदमादां निरुद्धते ॥
वेतनस्यानपार्कर्म नदृष्टं स्वामिपालयोः । क्रमशः कथ्यते वादो भूतभेदजनं विषयम् ॥ बृह. in
वि. र. p. 139. सि. वि. p. 41.

827. कर्मकालाद्युपमसम्भाषितवेतनः । कर्षकः सस्यानां गोपालकः सपिपां वृद्धकः
पशुपालानामेतां व्यवहृतानां दशभाग्यसंभाषितवेतनो लभेत ॥ अर्थशास्त्र III. 13 ; भूतवनि-
वितायां तु दशभाग्यं समान्तरुः । लाभगोपीजसस्यानां वणिगोपकृषीवलाः ॥ नारद IX. 3.
This is ascribed to कालका. by क. वि. p. 298.

(S. B. E. vol. 33 p. 345⁸²⁸ verse 13) lays down the rule that if the employer supplies food and clothing to the servant, the latter should get a fifth part of the crops (if no wages are settled) or a third part if the servant is given no food nor clothing by the employer. When no wages are settled *Vṛddha-Manu* prescribes that proper wages will be determined by experts in carrying⁸²⁹ maritime trade (and other traders) who take into consideration the time, the place and the purpose. Even when the wages were settled the employer could give less or more according to his pleasure in certain cases viz. when a servant or agent acts against the restrictions of time and place prescribed by his employer and consequently the profit is much less, the employer may give less than what is agreed but if the agent brings more profit (than expected) he may give more (Yāj. II. 195). When two or more employees undertake to finish a work but cannot finish it (owing to ill-health or similar obstacle) each of them should be given the wages appropriate to the portion done by each (as settled by an arbitrator), but if the whole work is finished by them the agreed wages must be paid to all of them together (Yāj. II. 196). Yāj. II. 193, Nār. IX. 4 and⁸³⁰ Br. state that it is the duty of the employed or servant to take as much care of the utensils supplied by the employer as he would take of his own, and that he should not act in that respect wantonly (or crookedly) and that if he did so his wages would become less. If a hired servant, after receiving his wages, does not do the work agreed to be done though able to do so, he should be made to repay to the employer the wages received and a fine equal to double of the wages and if he had not received wages but left the work without cause he should be made to pay to the employer

828. भक्ष्यमादधुतः सीराद्वानं कुर्वति पञ्चमम् । जातमस्यात् विभागं तु मण्डूपादधुतः ॥ बृह. ५. by स्मृतिच. II. p. 202, अथ. व. p. 324, म. वि. p. 295.

829. समुद्रयानकुशला वेदकातार्थवर्तिनः । निपचोदुर्भूति वा तु सा स्यात् प्रागुक्ता पदि ॥ बृहन्म. ५. by वि. र. p. 155, अथ. व. p. 324. The स्मृतिच. II. 202 ascribes it to Manu. Compare अर्थशास्त्र III. 13 'कावशिल्पिकुशीलवचिकित्सकवाग्जीवनपरिचाराकादिराशकारिकर्मस्तु पथान्यस्तस्तद्विधः कुर्वाद् यथा वा कुशलाः कल्पयेदुस्तथा केन नृभेता ।'

830. क्रियोपकरणे चैवां क्रियां परममुदाहृतम् । तत्प्रभावेन कुर्वति न जिह्मेन समान्यरेत् ॥ नारद. IX. 4. स्मृतिच. II. p. 203 and परा. मा. III, 324 read आप्रभावेन तद्वत्येव न जीह्वेन &c.; अतस्तु न कुर्वति स्वामिनः शास्त्रमन्वयि । अतिहानिं समामोति ततो वादः भवती ॥ बृह. ५. by स्मृतिच. II. p. 202, परा. मा. III, p. 324.

an amount equal to the wages (Yāj. II. 193, Nār. IX. 5, Bṛ. in ⁸³¹ S. B. E. vol. 33 p. 345 verse 15). Kaut. (III. 14) prescribes a fine of 12 panas for a hired servant who does not do the work undertaken even after receiving the wages and that he should be compelled to do the work. Nār. IX. 5 and Kāt. 657 provide that the king should compel him to do the work and then the agreed wages may be paid to him; but if he does not do it he should be fined.⁸³² The fine in such cases acc. to Vṛddha-Manu was 200 panas. Manu VIII. 215 and Bṛ. (S. B. E. 33 p. 345 verse 16) and Matsya 227. 9 provide that a hired servant, who though not ill, does not arrogantly do the work agreed should be fined eight *kṛṣṇas* and would not get wages at all. This applies where a substantial portion is left undone, but where only a little of the work undertaken is left undone then the servant is not to be fined, but he would lose all the wages (Manu VIII. 217). But if a servant falls ill, then he may do the work after he becomes well and would get the agreed wages even if a long time may have elapsed (Manu VIII. 216). Kaut. (III. 14) also provides that if the servant suffers from illness or is overwhelmed by a calamity, concession may be given to him or he may offer a substitute. The Āp. Dh. S. (II. 11. 28, 2-4) prescribes that if a husbandman who is not a slave but is hired for work) gives up the work or a cowherd acts similarly he should be punished with flogging and the animals handed over to the cowherd should be taken back from him. This may have been the ancient law, but it was modified in later ages. Kaut. (III. 13) states that if the employer does not pay the wages he should be fined six panas or a tenth part of the proper wages or the wages agreed upon and if the hired person denies the receipt of wages (though he really received them) he should be fined twelve panas or a fifth part of the wages.⁸³³ Kaut. (III. 14) further provides that in the contract of service it may be provided that the master is not to employ

831. सुहीतवेतनः कर्म न करोति यदा भूतः । समर्थयेद् दनं दाप्यो विमुञ्च तच्च वेतनम् ॥ बृह. q. by स्मृत्यन्तः II. p. 202, वि. र. p. 159; कर्मरम्भे तु यः कृत्वा सिद्धं नैव तु कारयेत् । यदास्कारयितव्योऽसावकुर्वन् दण्डमर्हति ॥ कात्या. 657 q. by स्मृत्यन्तः II. p. 203, वि. र. p. 110; सुहीता वेतनं कर्माकुर्वतो भूतकल्प द्वादशपणो दण्डः । संरोधश्चाकारणात् । अर्थशास्त्र III. 14.

832. मतिभूय न कुप्योऽसौ स कार्यः स्याद् यदादपि । स चेन्न कुप्योऽसौ कर्म दाप्युपाह्वं विमुञ्च दमम् ॥ दण्डमन्तः q. by स्मृत्यन्तः II. p. 203, परा. भा. III. p. 325, अथ. प. p. 325.

833. वेतनादाने द्वादशपणो दण्डः यदपणो वा । अयमप्ययमाने द्वादशपणो दण्डः यज्जयमानो वा । अर्थशास्त्र III. 13.

of 100 panas and that if the employer abandons the servant before the period fixed has expired he would have to pay the whole of the wages to the servant and a fine of one hundred panas (except in the case of act of God and the king). Kāt. (660) provides that a master deserting on a journey his servant that is tired or falls ill should be fined the first amercement if he does not wait for three days in the village. If a trader after engaging a vehicle or draught animals for carrying his merchandise for hire, does not employ them to carry his goods he should be made to pay a fourth of the hire settled and the whole of it if he discharges them when only a part of the journey has been made (Nār. IX. 7). If the merchandise be attached⁸³⁶ (by the king's officers for toll &c.) or be stolen the servant engaged to carry the goods will receive a proportionate amount (out of the lump sum agreed to be paid for a certain journey) according to the distance travelled (Kāt. 661). If the employer does not pay the wages of a servant even though the latter has done his work the king should make him pay the wages and also a proper fine (Br. in S. R. E. vol. 33 p. 346 verse 18). If a man⁸³⁷ having hired elephants, horses, bulls, asses or camels does not return them even though the work (for which he hired them) is finished he should be made to restore them together with the hire (up to the day of return). The same rule applies to a man taking on rent a house or water (reservoir) or a market and not giving it up at the time fixed (Kāt. 662-663). Nār. (IX. 20-21) provides that if a person builds a house on another's land by paying rent (*stoma*) for the land, he may take away when vacating the land the bricks, the timber and grass (thatch) of the house built by him, but if a man builds a house on another's land without paying rent and against the owner's wish then he has to leave

836. यदा च पणितं तद्वाण्यमानिभ्येत क्षिपेत वा । पातान्भयं नतस्तेन भाण्युपासावर्ति भुवि ॥ कारपा. 661 q. by स्मृतिच. II. 204; वि. र. p. 164; कृते कर्मणि वा स्वामी न वृथावृत्तने स्ते । राज्ञा द्वापयितव्यः स्वादिनयं चायुक्तयः ॥ बृह. in स्मृतिच. II. p. 204, वि. र. p. 165.

837. हस्तपद्मगोत्रोद्भादीन् सुहीत्वा भाटकेन वा । नापेक्षकृतकृत्यार्थः स तु दाप्यः सभाटकम् ॥ सुहवार्थपयादीनि सुहीत्वा भाटकेन वा । स्वामिनि नापेक्षावभावकृत्यः सभाटकम् ॥ कारपा. 662-663 q. by स्मृतिच. II. p. 303, वि. र. pp. 168-169, परा. मा. III. pp. 330-331. The word भाटक (which corresponds to the word भाट in Marathi and other vernaculars) appears to be a *prākṛit* equivalent of the old Sanskrit word भुति treated again as a Sanskrit word. In Sanskrit वेतन or भुति is used for wages, while भाटक or स्तोम means rent of a house or land or the like.

the materials of his house to the owner of the land when he has to give up the land. An important rule is stated by H. (S. B. E. vol. 33 p. 346 verse 17) that when a servant⁸³⁸ employed by an employer does some improper act (such as a theft) to another for the benefit of his master, the latter would be held responsible for the loss. The Matsyapurāṇa says that if a teacher having agreed to teach a lore or craft for money which he receives fails to do so, he should be fined the whole of the amount⁸³⁹ of the fee.

From the above it will be clear that contracts of service and letting on hire are lumped together under one head by the smṛtis.

Kaut. III. 14 provides that persons may be paid wages by a guild or corporation of workers of which they are members. The earnings of such guilds may be divided equally among all workers or as agreed upon among themselves. Yāj. II. 265 also refers to the fact that rules similar to those of partnerships may apply to guilds of husbandmen and artisans.

Certain rules are laid down in Nār. IX. 18, Yāj. II. 292 and Matsyapurāṇa 227. 144-146 about the monetary liabilities of prostitutes and persons visiting them. Vide H. of Dh. vol. II. pp. 638-39 above. The Matsyapurāṇa (227. 144-146) states that a brāhmana who visits a prostitute should be fined as many *paṇas* as he paid to her, that if a prostitute after receiving her fee does not receive the visitor and goes elsewhere she should be made to pay to the visitor double of the fee and a similar sum as fine to the king, and that if one, after telling a prostitute that she is to visit a certain person, takes her to a different person, he should be fined one gold *māsaka*.

The Matsyapurāṇa (227. 147) further states that a visitor who has had sexual intercourse with a prostitute and yet has not paid her fee should be made to pay double the (agreed) fee to her and a similar sum as fine to the king. Nārada provides that the chief prostitutes and the voluptuaries that stay with them

838. तस्यैव निमित्तकः सवः स्वको विदधानि यदः । तदर्थमधुने कर्म स्वामी तज्जा-
पराधुनयदः । इह. १. by स्मृतिच. II. p. 304; वि. १. p. 163. Compare section 238
of the Indian Contract Act as to the principal's liability for his agent's mis-
representation or fraud.

839. मूल्यमादाय यो विद्यां शिक्षं वा न प्रच्छति । दण्ड्यः स मूलं सकलं धर्मज्ञेन
महीभूतः ॥ मत्स्यपुराण 227. 6 q. by वि. १. p. 163.

duties of a vedic student are described by Nār. VIII. 8-15 and have been set out above in H. of Dh. vol. II. pp. 305-312 viz. to wait upon the teacher, his wife and son, to beg for food, to sleep on the ground, to do the bidding of the teacher, to learn the vedas, to offer fee to the teacher at the end of vedic study. An apprentice is distinguished in his actions and mode of maintenance from a śiṣya. The antevāsin, acc. to Yāj. II. 184, Nār. VIII. 16-21, Br. (S. B. E. vol. 33 p. 344 verse 6) and Kat. 713, resides with a master craftsman to learn some⁸⁴⁴ art or craft (such as goldsmith's work, singing, dancing, house-building), agreeing to work under him for a stated period; the master craftsman gives him food and teaches him in his own house, does not put him to any other work; if the apprentice leaves the teacher even though the latter is willing to teach him, he (the pupil) should be made to stay with the teacher and may be whipped or confined; the pupil even though he may have become an adept has to stay with the master till the end of the agreed period and the teacher appropriates the fruits of the apprentice's labour. If the master does not instruct the apprentice in the craft and makes him do other work, he would be liable to pay the first amercement and the pupil may leave him⁸⁴⁵.

Hired servants have different grades among them arising from the work they do, the wages they receive and the period for which they are employed and they are distinguished from apprentices in these respects and not as regards caste or mode of maintenance. According to Nār. VIII. 22-23 and Br. (S. B. E. vol. 33, p. 344 verse 8) a hired servant is of three kinds and his wages depend on the work he does and his ability to do it. The three kinds are the highest (viz. a soldier), middling (an agriculturist), the lowest⁸⁴⁶ (a porter). A hired servant may

844. अनेकाया तेषामिदं हि जातिकर्मास्तुल्यतः । विद्याविज्ञानकामार्थेनित्येन चतुर्विधाः । एकैकः पुनरेतेषां क्रियामेवैवंपश्यते ॥ विद्या च यी समावृत्तायाः कार्यकुसामलक्षणा । तदर्थे ब्रह्मशूपा यदुपाचार्यस्येतिवाच्यम् । विज्ञानमस्तुल्यते धित्वे हेतुकुप्यदिमस्तुतिः । श्रुत्यादिकं च तन्विजस्य कुर्वीत कामं शूरोर्ये ॥ बृह. ५. ५. by वि. र. pp. 140-41. स्मृतिच. II. p. 195. ख. म. p. 314. श्रुतहारसार p. 355 (the last three contain only the last two verses).

845. यस्तु न ब्रह्मवेत्ति तस्य कर्माण्यप्यानि कारयेत् । याच्यपासादसं पूर्वं तस्मात्पिण्डो निवर्तते ॥ कात्या. ५. ५. by अपराधार्क p. 790. परा. मा. III. 338. वि. र. p. 141.

846. यदुपाचार्यतः पौकस्तथा भागं शूरोऽपरः । हितमप्येतत्तमत्वे च सर्वेषामेव चोदितम् ॥ द्विभसाधार्यपण्यमसत्विमसाभ्युद्यततया । कामं कुर्वीत विज्ञानं जगते शारिमाकितम् ॥ बृह. ५. ५. by स्मृतिच. II. p. 196. परा. मा. III. p. 339-40.

be engaged for a day, a fortnight, a month or for longer periods, should perform the work undertaken and get the wages agreed upon. He may be paid in cash or by giving him a share of crops or a share in the milk of the cattle he tends⁸⁴⁷.

A person who is employed and given authority over all servants and also one who looks to the affairs (expenditure &c.) of the household is called 'adhikarmakṛta (or-kṛt), acc. to Nār. VIII. 24. All these four are called workers in clean occupations, while the fifteen kinds of slaves are employed in the lowest and dirtiest work (Nār. VIII. 25). The difference between the hired servants and slaves is this that the latter surrender all their freedom and themselves entirely to another, while the former, though dependent to some extent, do retain some freedom (Kāt. 715), but a *bṛāhmaṇa* was not to be a slave⁸⁴⁸. In very ancient times the master's liability for the acts of his servant does not seem to have been recognized. For example, Gaut. XII. 17 states that if cattle entrusted to a herdsman cause loss to crops, then the herdsman is to be held responsible (and not the owner who employs the herdsman). But Manus VIII. 243, Yāj. II. 161, Nār. XIV. 29 appear to hold the master liable to make good the loss caused by the herdsman's default. Vide Br. quoted above under *vetananyā-nipāṭikarma*.

The kinds of slaves and the incidents of slavery have been already dealt with in H. of Dh. vol. II. pp. 180-189. A few matters not referred to there may be dealt with here. 'Buddhist India' p. 55 (by Rhys Davids) shows how slavery in the Buddhist period was not as miserable as under the Greeks. The *Rajatarangini* IV. 39 states that king Vajraditya of Kashmir (in the 8th Century A. D.) sold many men as slaves to Mlecchas. One cannot help blaming the British Indian Government for the Assam Labour and Emigration Act (VI of 1901) whereby a modified form of serfdom or slavery was legalised for the benefit of the tea planters of Assam, Bengal and other provinces and by sections 168-169 of which poor indentured labourers who were induced to labour on the sumptuous monthly wages of five rupees were liable to be sentenced to fine or in

847. द्विपकारो भलभूतः कुपिगोमीनः स्यूतः । जलसरपालथ श्रीरास लभेत न संशयः ॥ वृह. q. by स्मृतिस. II, p. 196, एप. म. p. 316, हि. र. p. 143.

848. स्वतन्त्रस्यात्मनो दातादास्यं दारवदभयः । जिघृक्षुर्वर्जेषु विज्ञेयं दास्यं विपश्य न कश्चित् । कात्या. 715 q. by अपभ्रंश p. 788, स्मृतिस. II, p. 197.

default to imprisonment, if they left off the work to which by agreement they were tied down in unhealthy districts and unhealthier surroundings.

Kāt. (725) provides that⁸⁴⁹ if a woman who is not a slave marries a slave she becomes a slave since her husband is her lord and is dependent on his master. If a person buys or sells a brāhmaṇa woman⁸⁵⁰ as a slave the king should annul that transaction and all persons (concerned in it) should be fined by him and the same holds good in the case of a woman of a respectable family who took shelter with a person and was made a slave by him or transferred by him to another as a slave (Kāt. 726-727). The punishment of first amercement is prescribed for a person who has sexual intercourse with the nurse of his child or with another woman who is not a slave and the wife of his attendant as if she were a slave; and a fine of two hundred panas is provided in case a master who is not in difficulties and is well-off desires to sell a female slave who is faithful and weeps bitterly (being unwilling to leave him). Nār. VIII. 40 provides that if a slave leaves his master and goes over to another saying 'I am your slave' that would not help the slave, as his former owner would be entitled to claim him back. Uśanas states⁸⁵¹ that a *guru* (elderly person), a *śapada*, a brāhmaṇa and persons of the lowest castes (cāṇḍālas &c.) cannot be made slaves, nor can any one (of the higher castes) who is superior in learning be the slave of one of the same caste.

849. दामेभिरा लब्धस्त्री या सापि दासत्वमाप्नुयात् । परमाज्ञतोऽप्युक्तस्याः स्वात्मधीनः प्रभुर्भवति ॥ कात्या. १. by स्मृतिच. II. 201, ११, ३. p. 322, म. वि. p. 294.

850. आद्युच्चारं ब्राह्मणीं वस्तु विक्रीणीत तथैव च । राज्ञा तदुक्तं कार्यं दृष्ट्वा रजः सर्वं एव ते ॥ कामाक्षु संञ्चितो वस्तु दासीं कुर्यात्कुलस्त्रिवम् । संक्रामयेत् वारयत् दृष्टवस्तुत्वा-कुलं भवेत् ॥ बालधात्रीमदासीं च दासीमिव धुनास्त्रिः । परिचारकापानीं वा पाप्नुयात्पूर्वसाह-सम् ॥ विक्रीयमानां यो भक्तो दासीं विक्रेतुमिच्छति । अनापदिशः शक्तः सप्त पाप्नुयात् द्विज्ञातं दमम् ॥ कात्या. १. by अथर्वार्क p. 789, वि. र. pp. 154-155, ११, ३. p. 323.

851. न सुवर्मे सपिण्डश्च न विप्रो नान्यदयोनयः । दासभावं न वेदन्ति न च विद्या-पिप्रो द्विजः ॥ उशानस् १. by म. वि. p. 296, which explains 'ब्राह्मणस्य अन्ययोनिर्न दासः विद्यापिप्रश्च । एवं सपिण्डादेर्ब्राह्मणः । सवर्मे तु विद्यापिको न दासः ।'

CHAPTER XXI

SAMVID-VYATIKRAMA AND OTHER TITLES

(Violation of compacts or conventions)

Nār. (XIII. 1) employs the expression *samayajñānapākarma*. Manu VIII. 5 employs the first expression. Manu (VIII. 218-219) has both names in view, when he says 'I shall now declare the rules applicable to those who violate *samayas* (conventions). He who having entered into a compact (*samvid*) under (the sanction of) an oath with the inhabitants of a village or a district or with a group of traders or other persons breaks it through greed should be banished from the kingdom by the king.' In Āp. Dh. S. I. 1. 1. 2 and II. 4, 8, 13 the word 'samaya' ⁸⁵² is employed in the sense of 'convention or accepted doctrine'. The same word is also used in the sense of 'agreement' as in Yāj. I. 61 (*gāndharvāḥ samayānmithaḥ*). In this title it means 'the acceptance of a certain rule or convention arrived at by many', as explained by ⁸⁵³ Medhātithi on Manu VIII. 219. It signifies a local or caste usage or convention made by groups of people (such as guilds and corporations) binding on all members that form or join the several groups. The Amarakosa holds that *ācūra* and *samvid* are among the several meanings of *samaya*. Medhātithi explains that, if the inhabitants of a village come to a decision that they would oppose the inhabitants of a neighbouring village who were indulging in grazing their cattle in the pastures of the former village or diverting the watercourses and that if in doing so there was a riot or a suit were filed before the king, all should

852. धर्मज्ञसमयः समार्थं वेदाश्च । आप. ध. सू. I. 1. 1. 2. अङ्गानां तु पथानैरप्यदेश इति न्यायविरुद्धमयः । आप. ध. सू. II. 4. 5. 13.

853. समयसिद्धिः । समयः सिद्धः । सङ्कुल इदं सया भगवानमुन्ये निश्चितं कर्तव्यमि-
'यन्मुपपन्नः । मेधा, on मनु 8. 219: समयः शपथान्धारकालसिद्धान्तसंविदुः । अमरकोश.
Medh. on Manu VIII. 220 takes the word 'saṅgha' by itself and Bühler (S. B. E. vol. 25 p. 293) is misled (probably by some corrupt ms) into translating as 'belonging to a corporation inhabiting a village or a district'.
मेधा. says: 'एवं धामसमुदायो देशसंघः (देशः सङ्घः) एकपक्षात्पुनरातो नागदेशतामिनो
नागाजलीयानामपि गणितो नमूनी यथा मिलुतो सङ्घो गणितो सङ्घश्चातुर्विधानं
सङ्घ इति ।'

be of one mind, that any one of those who encouraged this decision would be liable to be punished if he backed out of it through some inducement offered by the headman of the other village. Nār. XIII. 1 explains that *śamaga* means the rules (or conventions) settled among heretics, *naigamas*⁸⁵⁴ and the like. Yāj. II. 192 and Nār. XIII. 2 provide that the conventions of guilds, *naigamas*, heretics, *śreṇis*, *pūgas*, *gaṇas* and in towns and districts should be enforced by the king and their traditional mode of conducting their business should be protected. Some remarks have already been made on guilds and corporations above (pp. 156-57 notes 196-198). Vide also H. of Dh. vol. II. pp. 66-69 for the guilds and corporations and the meanings of words like *śreṇi*, *pūga*, *gaṇa* etc. Some further information is added here. The Sm. C. (II. p. 223) has a very⁸⁵⁵ interesting note illustrating the various conventions of several groups and its remarks are copied *verbatim* by the V. P. pp. 332-333. It says: 'Even heretics have certain rules made for the benefit of their monasteries. Among *naigamas* there is a practice that those who disregard messages brought by servants wearing a specific jacket (as a uniform) should be fined. *Śreṇis* are guilds of craftsmen such as weavers. They have rules that certain articles are to be sold only by a certain guild and by no other. *Pūgas* are groups of elephant riders and horse riders.' *Vrāta* is defined by Kāt. as a body of persons armed with various weapons, while the *Mahābhāṣya* on Pāṇini V. 2. 21 (*crītena jivati*) explains it as a 'group of men of several castes and several occupations who make a living by relying on their formidable bodies'. Acc. to the Mīt. heretics are those like the Buddhās who do not regard the Veda as authoritative. *Gaṇa* means, acc.

854. *नैगम* is defined by बह्विज्जम्भत as follows: पौरुषेयवत्तां वेदं प्रामाण्यं (वेद-प्रामाण्यं) प्रवृत्तिर्ये । तेषां वैशेषिकादीनां नैगमरूपा प्रकीर्तये ॥ q. by स्वर. नि. p. 13. But this sense is not appropriate here. The same work (p. 14) quotes काल्याणनय definition which is more appropriate 'नानापौरसमाजस्तु नैगमरूपाः प्रकीर्तितः ॥'

855. पुनस्तत्रैवाध्यापकमुत्सृज्य सर्वे न सन्तान्तामितादृषः सन्ति समगः । यत्ने तु यजमेद्वि यजमे वाग्दे कर्णवेधः कर्तव्य इत्येवमादिरस्ति समगः । यथादिग्विज्यादिशब्देन जगत्पूरिमहाजनः परिसूचितः । तत्र सूत्रदक्षिणाधर्धमात्मो मानसीय इत्यदिसमयेति । पूर्वं तु पाथ्यदिकं एतौत्वा अन्वयं पारयतो न तद्विज्ञेयमित्यस्ति समगः । जनपदे तु कश्चिद्विज्जुह्वस्ते दुःशब्द-प्रदणं कार्यं कश्चिद्विज्जुह्वस्ते इत्यादिकोरुपमेकविधः समगः । जनपदे तथैवपि तथाशब्दोऽनु-सन्नाम्योपपुरादीनां प्रदर्शनार्थः । तत्र न सोपचारस्थाने स्वातन्त्र्यमित्यादिकोऽस्ति ग्रामे समगः । जमीरखीपुरुषवर्गमित्यत्र न वृण्व इत्यादिकोऽस्ति पोषे समगः । रसूतिच II. p. 223 ०० मारद XIII. 2 'पाथ्यद्विनैगममेतौपुनस्तत्रतयनादिषु । संरक्षेत् समगं राजा पूर्वं जनपदे तथा ॥'.

to Mit. 'an assemblage of armed persons subsisting by following one occupation', while Kāt. (680) says it is a corporation of brāhmanas. In the Rājāt. II. 132 reference is made to corporations of purohitas at temples and tirthas (sacred places). The Sm. C. states that among pūgas and vrātas there is a convention that they must go to battle all together and not separately. Among ganas there is a usage that the lobes of the ear (of a child) are to be pierced on the 5th day or in the fifth year from birth. Among mahājanyas in a settlement of brāhmanas there is a convention that a brāhmana repairing to them for collecting fees to be paid to his teacher (at the close of Vedic study) should be honoured (i. e. should be paid some contribution). In certain districts there is a usage that either the seller or the buyer should keep in his hand $\frac{1}{5}$ of the price (probably for finding out whether the article is useful for the purpose in hand and resiling from the bargain if it is not). In forts or capitals there is a rule that corn taken out of it by a person with him when going out elsewhere should not be sold by him. In villages there is a rule that in pastures no digging would be allowed. In the hamlets inhabited by abhiras there is a convention that for adultery by a male or female there is to be no fine. It does credit to the ancient writers on dharmaśāstra that they were tolerant enough to require the king, whatever his own religious persuasion might be, to honour and enforce the usages of even heretics among themselves. The only requirement was that the enforcement of their usages must not be opposed to the interest of the country or the capital and must not cause commotion and must not be plainly immoral⁸⁵⁶ (Nār. XIII 4-5 and 7 and Medhātithi on Manu VIII 220). Yāj. (II. 188-192) lays down the following rules: there should be a committee (of two, three or five, acc. to Br.)⁸⁵⁷ to look after the business of the guilds &c. (called *kāryacintaka*) who should be religious, pure, not covetous and all members should carry out what they decide upon; when the committee members approach the king on some business of their guild he should bestow on them gifts and

856. दीपवत्करणं वस्त्रपादनाभ्यामप्यकल्पितम् । बहुजनमपि तद्व्याजा ओपस्वकामो निर्वर्तयेत् ॥ नास्द्वि (समयस्यासत्पाकर्म 7) on which the स्व. म. p. 337 has the following instructive note: यतोभादिदीपवत्करणं क्षुतिस्मृतिविरुद्धं विषयादौ वेश्यालादिके पावन्त्यादिभिः प्रकल्पितं तद्वहुकालबहुजनमपि राज्ञा निर्वर्तनीयमित्यर्थः ।

857. द्वौ त्रयः पञ्च वा कार्यः समुहितवर्जितः । कर्तव्यं वचनं तेषां शान्तवैजिगन्तादिभिः ॥ बृह. ग. in स्मृतिष्व. II. p. 224, स्व. म. p. 334. For the qualities of the committee members (similar to Yāj. II. 191) vide Br. (S. B. E. vol. 33 p. 347 verse 9) q. by स्व. म. p. 334.

honour them. Whatever is obtained by any one sent on the business of the group must be handed over by him to the heads of the group (also Br. in S. B. E. vol. 33 p. 349 verse 22)⁸⁵⁸ and if he does not do so he should be fined eleven times as much. Whoever goes against the heads of the group that are working for its benefit should be punished in the first amercement (by the group itself, acc. to Sm. C. II. p. 224). Kāt. (677) states the general rule that whatever is obtained (by the committee or advisers of the group) or is saved by them or whatever debts are incurred by them for their group and whatever they obtain through the king's favour should be shared equally by all (members of the group). Kāt. (674-675) provides that whatever debt was professedly incurred by the committee for the group but was misappropriated by them or applied to their individual purposes must be paid by them and that those who subsequently join the groups already formed become equally entitled to the property and liable for the debts previously acquired or incurred. Manu VIII. 220 and Br. (S. B. E. vol. 33 p. 348 v. 14) provide a fine of six *niṣkas* of four *suvarṇas* each (or six *niṣkas* and four *suvarṇas*) for him who falls out with his associates. Kāt. (671) provides that that member (of a group) who opposes what is reasonable, who gives no scope to (i.e. obstructs or persistently interrupts) a speaker (in a meeting of the group) or who speaks absurdly should be made to pay the first amercement. Yāj. II. 187 prescribes forfeiture of all property and banishment for him who misappropriates the property of the group or corporation or who violates the conventions made by the group (or the king). As stated by the Mit. this and other sentences depended upon the nature and gravity of the offence and the capacity of the offender⁸⁵⁹.

Krayavikrayānuṣāya (repentance after purchase or sale). Manu VIII. 222 and Kaut. III. 15 regard this as one title of law. But Nār. (XI and XII) splits this into two titles viz. *vikriyāsampradāna* (non-delivery of a thing after it is sold for a price) and *kṛtānuṣāya* (repentance after buying). Manu states the general rule that whenever a person after buying

858. वक्षैः याते रक्षितं वा मणार्थं वा धनं कुतश्च । राजपसादुत्पन्नं च सर्वेषामेव तत्सम्पत् ॥
मणसुदितस्य यत्किञ्चिदुत्पन्नं भक्षितं भवेत् । आणमार्थं विनिवृत्तं वा देवं तैरेव तदुत्पत् ॥ मणानां
अजिर्णानां मणः स्तुर्पे तु मण्यताम् । तत्कमस्य धनवत्स्य समीक्षाः सर्वे एव ते ॥ कात्या. १. ५४
स. नि. p. 330-331, नि. १. p. 187, स्तुतिच. II. p. 227, च. य. p. 338

859. मनुप्रतिपादितदण्डानां निर्वासनचतुःसुवर्णनिष्कशतमानानामन्यतमो अतिशफावाच-
वेक्षया कल्पनीयः । मिता. ०० या. II. 187.

or selling anything repents of having done so, he may return or take back that thing within ten days. Nār. XI. 2 states that property is of two kinds in this world viz. movable and immovable and that all property is designated as *panya* (saleable) in rules about purchase and sale. According to Yāj. II. 254, Nār. XI. 4-5, Viṣṇu Dh. S. V. 127⁸⁶⁰, if a man sells property and does not deliver it to the purchaser, he should be made to deliver it to the purchaser together with profits (between the time of sale and delivery) and if it is movable together with the price of profits arising⁸⁶¹ from it (such as milk in the case of a cow). Viṣṇu Dh. S. V. 128 prescribes a fine of 100 paṇas against the vendor. Kaut. III. 15 prescribes a fine of 12 paṇas against the vendor who after selling a thing does not deliver it and also against a buyer who having purchased does not take delivery of it, except when the thing itself is defective or is lost by act of king or theft or by fire or flood or unless the transaction was for inadequate price or brought about in distress⁸⁶². If the article sold is not delivered by the vendor after demand by the vendee and it is injured, destroyed by fire or stolen, the loss will fall on the vendor (Nār. XI. 6, Viṣṇu Dh. S. V. 129, Yāj. II. 256). These rules apply when the vendor does not feel repentance for having sold the thing, but if he feels repentance then Manu VIII. 222 will apply and the vendor may pay back the price and recover the article within ten days⁸⁶³ from the sale. Kat. (684) provides the same rule. No one, either buyer or vendor, can rescind the sale after ten days and if any one uses force in

860. विक्रीय वपर्वं दूरयेन केतुर्वा न प्रयच्छति । स्वावररजोद्वये दास्यते जलुमन्त्रं क्रियाफलम् ॥ नारद XI. 4. The *mita*, on Yāj. II. 254, विवादचन्द्र (p. 50), *esp.* p. 342 and others read स्वावररजं द्रव्यं and explain 'विक्रयानन्तरं जात उपभोगः सदा' (*esp.* p. 342) and 'क्रिया सधनादिका काले दुग्धादि । समाहारोदयः' (विवादचन्द्र p. 50).

861. 'Udaya' in Nār. and Yāj. may mean either the profits from the property that the vendor enjoyed or the difference in price between the date of sale and the date of delivery if the property became less in value. This applies when both parties are inhabitants of the same place; but if the purchaser is one who comes from another country then he may be awarded the profit that he would have made in the other country by selling it if it had been delivered to him at once.

862. क्रीतमकीणतो वा हानिः सा केतुरेव स्पष्टः । विष्णुधर्मसूत्र V. 129. विक्रीय वपर्वमनयच्छतो दादशपणो दण्डोऽन्यत्र दशोपनिषातविशेषः ... क्रीत्वा वपर्वमनयच्छतो दादशपणो दण्डोऽन्यत्र दोषो ... होमः । गोविन्द III. 15.

863. एवं पणो दशहस्तं परतोऽनुदास्यो न तु । कात्या. 684 q. by स्वतिस्र. II. p. 218, *वि. r.* p. 192, *परा. sa.* III. p. 367.

recovering the article sold or bought after that period the king should fine him 600 panas. *Manu* VIII. 228 extends these rules about repentance and recovery within ten days to all transactions whatever. *Kāt.* (685) prescribes that the period of ten days for repentance is allowed to vendors and vendees only in the case of land, and that the period is 12 days when the parties to sale of land are sapindas of one another and that in other cases the period is even shorter.⁸⁶⁴ *Yāj.* II. 257, *Nār.* XI. 7-8, *Br.* (S. B. E. vol. 33 p. 350 verse 4) provide that when a vendor having sold a thing to one man for a price received sells it to another or having concealed the defects of an article sells it as free from defects he should be made to return double the price to the purchaser and a fine equal to double the price to the king.⁸⁶⁵ The above rules apply where the purchaser has paid the price, but if there is a mere agreement and no price is paid, then the vendor or vendee is guilty of no wrong if he resiles from the bare agreement to sell or buy unless they have made an express stipulation that the agreement cannot be rescinded (*Nār.* XI. 10). When at the time of the agreement for sale, the vendee pays something by way of earnest, then if the sale goes off through the fault of the vendor, the latter has to return to the vendee double of the earnest;⁸⁶⁶ but if the purchaser does not finally take it he loses the thing and also the earnest. *Nār.* XII. 1 prescribes that when a vendee after having purchased a thing for a price repents of the purchase that is the title of law called 'rescission of purchase.' *Nār.* XII. 2 prescribes that if the purchaser thinks that he has made a bad bargain he may return the thing purchased to the vendor on the same day in an undamaged condition (and may receive back the price paid); but if he returns it on the 2nd or 3rd day after the purchase (including the day of purchase) he will have to lose respectively one-thirtieth or one-fifteenth of the price and after the third day he cannot return the thing at all (*Nār.* XII. 3). But *Yāj.* II. 177 and *Nār.* XII. 5-6 lay down

864. भुगेर्दशांशं विक्रेतुरापस्तकेतुरेव च । द्वादशाहः सपिण्डानामपि चात्यन्तः परम् ॥
कात्या. (685) q. by परा. मा. III. p. 364.

865. ज्ञात्वा सदोषं वस्तुव्य विक्रीणीति विच्छदणः । तद्वत् द्विगुणं वाप्यस्तसमं विमर्ष
मया ॥ बृह. q. by स्मृतिच. II. p. 220, परा. मा. III. p. 370.

866. सापङ्कारकृतं त्वयं द्विगुणं प्रतिदाययेत् । याज्ञ. II. 61: vide the *mita*, thereon.
सत्यङ्कारे च यो दूषा पथाकारं न दृश्यते । पण्यं भवेज्जिदुष्टं तदीयमानमनुकृतः ॥ व्यास q. by
स्मृतिच. II. p. 220, परा. मा. III. p. 370. कृतिं सापङ्कारे सत्यङ्कारः सापङ्कारः स्त्रियाद् ।
अमरकोश, on which कीरत्नामी says 'अत्रायं सपैतद् विक्रेयमिति सत्यङ्कारे
सत्यङ्कारम्' and for सापङ्कार relies on पाणिनि VI. 3. 70 'कारे सापङ्कारश्च'.

the following periods for examination of things purchased, viz. one, three, five, seven, ten days, half a month and one month respectively in the case of iron (and clothes), milch cattle, beasts of burden, jewels (precious stones, pearls and corals), all sorts of grain, a male slave and a female slave. It must be supposed that these verses contain exceptions to the general rule in Manu VIII. 222 cited above. Kaut. (III. 15) allows only one night, three nights, five nights and seven nights for repentance to traders, husbandmen, cowherds, the mixed castes and higher castes and provides that where the articles sold are perishable a very short time only may be allowed. The above rules apply only when the purchaser made no examination at the time of purchase. Nār.⁸⁶⁷ XII. 4 and Br. (S. B. E. vol. 33 p. 350 verse 3) recommend that a purchaser should himself closely examine an article before buying it and also show it to others in order to find out its defects and good qualities and provide that when he has approved of an article after close examination he cannot return it to the vendor. Vyāsa provides that hides, fuel, bricks, yarn, grain, intoxicants, fluids, gold, inferior metals (like lead and tin) and other wealth should be carefully examined then and there i. e. when once bought after close examination none of these can be returned even if some defect⁸⁶⁸ is found therein. Nār. (XII. 5-6) cited above contains exceptions to this. Nār. XII. 7 gives an example of a purchase being not liable to be rescinded when a defective article is purchased with open eyes viz. a worn garment which is soiled with dirt and is in ragged condition cannot be returned to the vendor if it was in that state at the time of the purchase i. e. the maxim '*caveat emptor*' applies. If a purchaser does not take delivery of the thing sold to him, the vendor may sell it again to another⁸⁶⁹ and if the thing is lost through act of God or the king the loss falls on the buyer alone (Yaj. II. 255, Nār. XI. 9). Kāt (692) provides⁸⁷⁰ that what has been sold by a lunatic or an intoxicated

867. परिक्षितं स्वयं पश्यन्मयेषां च यदुक्षते । परिक्षितं बहुमतं गृहीत्वा न पुनस्तपेत् ॥
बृह. q. by स्मृतिच. II. p. 220, नि. र. p. 198.

868. अनेकाद्वैकाक्षपात्पातनरसस्य तु । वसुकुम्भक्षिरप्यानां सद्य एव परीक्षणम् ॥
व्यास q. by स्मृतिच. II. 220, नि. र. p. 198 (reads तुलकाद्वै and वसुकुम्भ),
व्य. q. p. 339.

869. Compare section 46 of the Indian Sale of Goods Act (III of 1930) for the vendor's right of resale and sec. 36 about the person who has to bear the loss of goods.

870. मत्तोममतेन विक्रीतं ह्यिममूल्यं भवेन वा । अस्वतन्त्रेण सुधेन उपायं नश्य पुन-
र्धेत् ॥ कारवा q. by स. नि. p. 312; नि. वि. p. 57, व्यस. नि. p. 354 and व्य. न. p. 345 ascribe it to बृह.

person or through intimidation or for an inadequate price or by one who is dependent or by an idiot should be relinquished by the purchaser; it still belongs to the seller. Kāt. (705-706) lays down a novel rule to find out what is adequate or inadequate price. What⁸⁷¹ is decided by the neighbours assembled together, who know (the land &c. and its value) and who are afraid of committing sin, as the price of fields, gardens, houses and the like, of bipeds and quadrupeds, is declared to be the proper price; a price which is less or more than it by one-eighth is declared to be improper; what is sold for an improper price may be annulled even after a hundred years. Kāt. (704) states that when the owner of a field absconds together with the surety⁸⁷² for the payment of the land tax, the judges of the court may order a sale for recovery of the tax and that such a sale may be set aside up to ten years and a compromise or exchange up to three generations, if it is inequitable. Bhāradvāja provides that when taxes are not paid both by the tax-payer and his surety even when called upon to do so, then the king may order a charge on the land or sale of the land.

Uktalābha is defined as a conditional sale, where a man borrows only a portion of the proper price of a land and stipulates that he would return the money on a certain day and that if he did not do so his ownership over the land would come to an end.⁸⁷³ Kāt. (711) adds that a sale of the *uktalābha* kind will be valid if it is for more than half (the proper price of the land), provided more than ten years have elapsed (after

871. समवेतैस्तु सामन्तैरभिज्ञैः पापभीक्ष्मिः । शोकारामगृहादीनां द्विपदां च चतुष्टयम् । कल्पिते मूल्यमिवाधुर्भायं कृत्वा तदुद्यया । एकभागातिरिक्तं वा हीनं वायुचितं स्मृतम् ॥ समाश्रममतीतिदपि सर्वं तद्विनिवर्तते । हीनमूल्यं तु तत्सर्वं कृतमप्यकुतं भवेत् । कात्या. q. by स. वि. p. 325, स्पष्ट. नि. p. 352; vide बृह. q. by स. वि. p. 326 'मूल्यं द्वात्रिंशत् स्मृतं मूल्यमधुचितं स्मृतम् । कपसिद्धिस्तु नैव स्याद्वत्सराणां श्रौतसि ॥'

872. पटायिते तु कश्ये करयितुं वा सह । करार्थं करदशेन विक्रीणीतुः सभासदः ॥ सन्निधौ परितुन्निधौ विधमा वा विभोगतः । आज्ञायापि कपध्यापि दृष्टाभ्यं विनिवर्तयेत् ॥ कात्या. and बृहकात्या. respectively q. by स. वि. pp. 324 and 320; स्पष्ट. नि. p. 348 reads slightly differently, आज्ञाधिसत्कपध्यापि करे दृष्टौ विधीयते । उभाप्यप्यत्र न स्यात्तस्मिन् धर्मविदो विदुः ॥ भारद्वाज q. by स. वि. p. 324.

873. किञ्चिच्च दध्यमाद्याप कांते दास्यामि ते कश्चित् । नो चेन्मूलमिदं स्वतः केदार-
रयेति यः कपः । स उक्तलाम् इत्युक्त उक्तकांतेऽप्यनर्पणात् । भारद्वाज q. by स्पष्ट. नि. p. 331, स. वि. p. 324. This is similar to the mortgage by conditional sale defined in section 58 of the Transfer of Property Act.

the period fixed for repayment). An *avakraya*⁸⁷⁴ becomes valid after possession for over three generations and a (regular) purchase by mutual agreement becomes valid at once. Kāt. (712) further⁸⁷⁵ prescribes that the unpaid purchase money carries compound interest after demand if no time is fixed for payment, but, if a time is fixed, then only the balance has to be paid up to the end of that period. Br. provides that in all sales, the sale deed should mention the wells and trees (on the land), the water and ways and that the crops, trees and fruits, wells, tanks and house standing on the land sold would belong to the vendor if they are not put down in the deed of sale.⁸⁷⁶ According to *Hārīta* the rules of sales are to be extended to exchanges.⁸⁷⁷

From the *Rājataranginī* VI. 41 it appears that a fraudulent purchaser, who, by means of the heavy bribe of 1000 *dīndras*, induced the officially authorized scribe to include a well in the sale of a house when it was intended to be excluded from it, was banished from the country by the king, his property being confiscated and given over to the cheated vendor.

874. अर्थाग्रे कश्चः सिद्धेदुक्तलानो वृत्तान्वितः । अवकयस्त्रिभोगेन सद्य एव वचिकयः ॥ कात्या. (711) q. by स्वय. नि. p. 349 (which reads वचिक्रिया at the end, that makes hardly any sense) and स. नि. p. 326. The word अवकय is explained in various ways. The Mit. on Vāj. II. 336 defines it as a transaction whereby a bailer (e. g. a washerman) transfers an article bailed to him (for washing &c.) to another for hire. Pāṇini IV. 4. 50 employs the word 'avakraya', but the *Siddhāntakaumudī* explains it as the due to be recovered by a king from a market (or the like). Gaut. XII. 39 employs the word 'avakrita' which is explained by Haradatta as meaning 'what is purchased, but the price of which is unpaid or only partly paid'. This last seems to be the sense intended by Kāt. who provides that a sale of land, the price being wholly or partly unpaid, would become indefeasible only after enjoyment for three generations. सुमन्तु as quoted in S. V. p. 321 defines अवकय as 'अर्थादुत्तमदत्तं तु कयमाहवकयम् । अवकयो निर्वर्ते यदि काले न दीयते ॥'

875. मूल्यात्कल्पयदानेपि कयसिद्धिः कृता भवेत् । चक्रद्वयं च मदात्तं द्वे तत्सम-वाहने ॥ कात्या. 712 q. by स. नि. p. 327.

876. विक्रयेषु च सर्वेषु कृपद्वयादि लेखयेत् । जलमार्गादि यत्किञ्चिदुपगम्येव ब्रह्म-स्पतिः ॥ अत्राशुपुत्रं परिपक्वमस्यं ब्रह्मे कले वायुपभोगयोगम् । कृपं तदाकं गृहमुक्तं च कतिपि विक्रयिषु ब्रह्मिणः ॥ बृह. q. by स्वय. नि. p. 349, स. नि. p. 326. Compare sec. 8 of the Transfer of Property Act (Act. IV. of 1882) as to what passes on a sale. The स्वय. नि. p. 349 explains as एष्वलिकितेषु केतुर्न भवन्तीत्यर्थः.

877. सप्तमूढानभिज्ञानभीतेर्निनिमगः कृतः । दद्यात्तुचित्तमूल्यं स्यात्सर्वं तद् विनि-मते ॥ हारीत q. by स. नि. p. 326. Compare sec. 118 of the Transfer of Property Act.

The Vyavahāranirṇaya, after quoting Br. and Vyāsa, very lucidly explains what is meant by sale, purchase, exchange &c. Gold and the like which a man desires to render or pay is called price, while land, house and the like are said to be 'panya' (saleable thing). Purchase means acceptance of a thing preceded by the offering of a price (either paid or agreed to be paid); sale is the acceptance of a price preceded by the offering of a saleable thing. *Parivṛtti* or *parivartanū* is the acceptance of an article for an article of the same kind; if there is a disparity in value between the two articles exchanged the exchange is called '*avalakṣya*'; when there is an exchange of two articles of different kinds but of the same value it is called *vinimaya*.⁸⁷⁸ The Vyavahāranirṇaya makes elaborate provisions for sale of land at the order of the king for non-payment of land tax. It quotes Prajāpati (p. 350) to the effect that the purchaser at such a sale must offer half or at least one-fourth of the real price of the field and that the original owner could get back his property sold for the royal dues by paying the full price to the purchaser up to three generations. Other elaborate rules on the same subject are passed over here for reasons of space. These provisions indicate that ownership in cultivated fields belonged to individuals and that the State had only the right to levy taxes. Vide H. of Dh. vol. II. pp. 865-869 and Kāt. quoted above (on p. 196) for a discussion of the theory of the State's ownership of all lands. Taking into consideration the Pūrvamīmāṃsā texts, the Vyavahāramayūkha and the verses of Kāt. and others it appears that the State was deemed to be the owner of all lands as a general proposition, but that where individuals or bodies of persons had been in long possession of lands that they cultivated, the ownership of the State was qualified and restricted only to the recovery of a tax or share

878. म (बुद्धयति) एवाह — आग्नीष्य विजातीयं द्रव्यमादाय आगम्यतः । कयो-
त्थस्य (कयोर्धनं !) परिग्रहः साम्ये तु परिवर्तना ॥ इति । आगमः । आग्नीष्य विजातीयं
द्रव्यमादाय आगम्यतः । कयो मूल्यस्य मत्पक्षः स्वत्वहेतुः परस्परम् । परिवृत्तिः सजातीयद्रव्ये
विनिमयः स्मृतः । वैषम्ये विक्रयः योक्तो मित्रे विनिमयः स्मृतः ॥ इति । स्वत्वहेतुफलजनकता एते
कवर्तिक्रयपरिवर्तनविनिमया इति । तत्र लोके जिह्वासितं सुवर्गादि मूल्यमुच्यते । उपदिष्टिसह
अवयवादि पण्यमित्युच्यते । तत्र मूल्यपण्यपूर्वकपण्यस्वीकारः क्रयः । पण्यपण्यपूर्वको मूल्ये
स्वत्वजनको मूल्यस्वीकारो विक्रयः । सजातीयपण्यपूर्वकः सजातीयस्य स्वीकारः परिवर्तना ।
वैषम्ये सति परिवर्तनपण्यपण्यद्वेनोच्यते । विजातीयसजातीयमिष्यपरिवर्तनायो विजातीया-
धिक्येऽवलक्ष्यो भवति, सजातीयाधिक्ये परिवर्तना भवति । सजातीयविजातीययोः साम्ये विनि-
मयो भवति । स्पष्ट. नि. pp. 347-348. The definition of sale given by the
Vyavahāranirṇaya looks quite modern. Compare sec. 4 of the Indian Sale
of Goods Act (III. of 1930).

of crops and that individuals and groups that had cultivated lands in their possession were regarded practically as owners of the land subject to the liability to pay land tax and to the right of the State to sell the land for non-payment of tax. The Vyavahāranirnaya quotes Br. and another *śmṛti* text that *śūdras*, persons excommunicated for grave sins (*patita*), *cāndālas* and desperate characters cannot be allowed to possess the lands of a *brāhmaṇa* by sale, partition or in lieu of wages;⁸⁷⁹ the same work further quotes Vyāsa, Bhāradvāja and Br. that when land is sold there is a right of pre-emption in favour of full brothers, *sapindas*, *samanodakas*, *sagotras*, neighbours, creditors and one's co-villagers in order.⁸⁸⁰

Gifts of immovables were looked upon in very ancient times with disfavour, though they were made even in the times of the Upaniṣads. Vide H. of Dh. vol. II pp. 740-41. But sales of land must have been rarer still in ancient times owing to the patriarchal and joint family systems. The Mīt. on Yāj. II. 114 quotes a verse forbidding the sale of immovable property;⁸⁸¹ but sales of lands are mentioned in many copperplate grants. Vide Paharpur plate grant of Gupta year 159 i. e. 478-79 A. D. in E. I. vol. 20 p. 59 (where one *kulyāvāpa* of land is stated to have been sold for two *dināras* to a *brāhmaṇa* and his wife named Rāmi by the city council for the provision of the worship with sandal-wood paste &c. of the divine *arhats* at a *śāhā*), E. I. vol. 17 p. 345 (grant of the time of Kumāragupta I in Gupta year 113), the Damodarpur plates (E. I. vol. 15 p. 113), Faridpur plates (Ind. Ant. vol. 39 p. 193), E. I. vol. 18 p. 74. From these records of the 5th and 6th centuries A. D. it appears that land was owned by private individuals or by

879. द्यूताश्च वणिताश्चैव चण्डालाश्चाततायिनः । नार्हन्ति विमलेवर्य कपविक्रय-
कर्मणि ॥ बृह. ; विमलेन कपेणापि तेननश्चण्डेपि वा । द्यूतः केनापि कपेण न विपश्चिन्तिमर्हति ॥
स्तुत्यन्तर ॥ q. by स्वय. नि. p. 354. With these provisions prescribed at least 1500
years ago one may compare the South African legislation passed in the
midst of the Second World War (alleged to be fought for different kinds
of freedoms) against Indians preventing the purchase by them of lands in
areas reserved for Whites.

880. एवातः । ज्ञातिसामन्तधनिकाः क्रमेण कपहेतवः । तयासञ्जतः पूर्वं सविण्वाश्च
कपे मताः ॥ बृहस्पतिः । सोदराश्च सपिन्वाश्च सोदकाश्च सगोत्रिनः । सामन्ता धनिका धान्याः
सत्तेनैव भूकपे मताः ॥ q. by स्वय. नि. pp. 355-56.

881. एवापरे विक्रये नास्ति कुर्पादाधिमवृत्त्या । q. by मित. on वा. II. 114.

joint families or by the village community or by the king and there was a fixed procedure when land was to be sold, that the purchaser approached the District Officers who consulted the *pustapālas* that kept a record of titles and that the villagers and headmen were consulted and asked to mark off the land to be sold. It appears that the *smṛtis* recommended that sales should be clothed in the formalities of gifts, probably because gifts were frequent and sales were not. A *smṛti* quoted by the *Mit.* (on *Yaj.* II. 114) states 'land passes (i. e. is transferred) with the assent of the villagers, the agnatic relations, the neighbours, the co-sharers and with the offering of gold and water.' The *Mit.* explains that these⁸⁸² are not absolutely necessary formalities of a sale, but that they are recommended for the sake of greater caution and convenience, that the assent of the villagers is to be secured for the publication of the transaction of sale, as a text says that acceptance, particularly of immovables, should be made openly, that the neighbours' assent should be secured for preventing boundary disputes, that the assent of agnates and co-sharers is desired for making it easy to complete the transaction, that it does not follow that without the assent of these the sale of land is not valid or complete. Water and gold are to be offered because gifts being highly commended, a sale should be clothed outwardly with the same formalities. Vide Dr. P. N. Sen's 'Hindu Jurisprudence' pp. 76-78 for the opposite procedure of the ancient Roman Law that gifts were to be clothed with the formalities of sale. For water and gold in the case of gifts vide above under *dattāpradānīka*.

Svāmgālavāda (disputes between the owner of cattle and herdsman who is engaged to look after them). In ancient times this must have been a prominent source of litigation in a predominantly agricultural country like India. *Nār.* appears to have included this title under *vetanasyānuṣṭhāna-karma*. *Yaj.* II. 164, *Nār.* IX. 11 provide that the cowherd has to bring back to the owner in the evening the cows (and other domestic animals) handed over to him in the morning by

882. यदपि-स्वग्रामकाणिसामन्तदायादाहुमतेन च । विरप्योदकदानेन यदुर्निर्गच्छति मेदिनी ॥ इति तत्रापि ग्रामाहुमतिः-यलियतः यज्ज्ञातः स्यात् स्वाग्रराय (स्वाग्ररस्य?) विज्ञातः इति स्मरणेन स्वग्रारायकाज्ञानार्थमेवापि स्यात् न तुनर्ग्रामाहुमत्या विना स्वग्रारासिद्धिः । विक्रयेपि कर्तव्ये साहिरण्यमुदकं दत्त्वा दानकलेन स्वाग्रविक्रयं कुर्यादित्यर्थः ।
मिता. ०२ वा. II. 114; यलियतः *Ac.* is वा. II. 176.

the owner, after grazing them in the pastures and making them drink water. *Manu* VIII. 230 says that during the day the responsibility for the safety of the cattle rests on the herdsman and during the night on the owner provided they are in the latter's house. When there is no express agreement as to wages *Nār.* IX. 10 and *Br.* (S. B. E. 33 p. 346 verse 19) prescribe that a cowherd⁸⁸³ will get as his wages all the milk of the cows tended by him on every eighth day plus a heifer (two years old) every year out of every one hundred cows tended by him or a milch cow with her calf every year for every two hundred cows looked after by him. *Manu* VIII. 231 provides another method when no wages are fixed by agreement viz. a hired herdsman, who is paid with milk, may milk as hire the best cow out of ten with the consent of the owner. It is the duty of the cowherd to struggle as much as in him lies to protect the cows from accidents and if he is unable to do so he must quickly inform the owner (*Nār.* IX. 12). *Br.* (S. B. E. 33 p. 346 verse 20) states⁸⁸⁴ that the cowherd shall save cattle from the danger of worms (or reptiles), robbers, tigers and from caverns and pits and that he should try to protect them to the best of his ability, should call out for help or inform his master. If the herdsman does not struggle to protect the cows, nor raise a hue and cry nor inform his master he must make good the value of the cow lost and must pay a fine to the king (*Nār.* IX. 13). *Manu* VIII. 232 and 235, *Yaj.* II. 164-165, *Vāyu Dh.* S. V.⁸⁸⁵ 137-138, *Nār.* (IX. 14-15) provide that if a cow or other domestic animal strays or is killed by worms (or reptiles) or slain by dogs (and wild animals) or dies by falling into a pit or by any negligent act of the herdsman, he himself shall make good the loss, if he did not exert himself to prevent this happening or if goats and sheep are surrounded by wolves and carried away while the herdsman does not hasten to their help he shall bear the responsibility for the loss. In these cases the herdsman has also

883. तथा घेयुस्तः क्षीरे लभेताह्वयस्तेऽधिकतम् । इह. q. by the स्मृतिच. II. p. 207, अथ. य. p. 346.

884. कुम्भिभोरम्भामगदसीम्भक्ष्यं च गालयेत् । व्याप्यतेऽप्यङ्कितः क्रोशेत्त्वामिने वा निवृत्तेन ॥ इह. q. by ति. र. p. 172, अथ. य. p. 347; the स्मृतिच. II p. 208 ascribes it to मारद.

885. दिवा पशून् वृक्षाद्यु याते यान्ते खमावति यातदीपः । विनश्यद्भूमत्वे च स्मामिने दद्यात् । निष्ठा V. 137-138.

to pay a fine of 12½ panna⁸⁸⁶ to the king (Yāj. II. 165). Ap. Dh. S. II. 11. 28. 6 makes⁸⁸⁷ the herdsman liable to pay the price if an animal in his charge dies or is lost (by theft &c.). Manu VIII. 233, 236, Nār. IX. 16, Vyāsa state exceptions to the above viz. where an animal is carried away⁸⁸⁸ by robbers though the herdsman raised a cry, he would not be liable to make good the loss provided he gave information to his master at the proper time (immediately after the animal is carried away) and proper place; or when the herdsman himself is seized or the village is attacked or the country is invaded, the herdsman would not be liable for loss or seizure of any animal under his charge; and also where, while the herd is grazing in a proper order near a forest, a wolf suddenly kills an animal. Manu VIII. 234, Nār. IX. 17 state that when cattle die through act of God or king or die without any fault of his while in charge of a herdsman, he has to free himself from liability or from the suspicion of himself having⁸⁸⁹ carried away surreptitiously the animal by producing before his master their ears, skin, tails, bladders, tendons and yellow bile or by showing their limbs (viz. their characteristic marks). Vyāsa states that if a herdsman, who has received his wages, abandons cattle in an untenanted forest and moves about in the village he should be fined by the king.⁸⁹⁰

Yāj. II. 166 provides that a portion of land should be set apart at the discretion of the villagers or that of the king as pasture for cows. Manu VIII. 237, Yāj. II. 167 prescribe

886. अर्धपणोदण in या. II. 165 means, acc. to the Mit., Sm. C. II. p. 208 and अथर्वकं p. 773, 134, while परा. मा. III. p. 375 and म्य. घ. p. 348 say that it means 12½: 'अर्धपणोदणः अर्धरहितत्रयोदशपणः सार्धद्वादशपण इति यावत् । ता- (क ?) स्तुतीपपूर्वपदाः समानाधिकरणेन समस्यन्ते उत्तरपदलोपश्च इति वार्त्तिकानुत्तरपदलोपी कर्मधारयः । यत् केचित्दुर्धाधिकत्रयोदशपणो दण्ड इति स्थापयन्त सप्तार्धदिमात्रादिषु अर्धदिमात्रादिमहाभाष्यकाराणां द्वावयोगदशानां पुत्रयम् ।' म्य. घ. p. 348. The वार्त्तिक seems to be सिद्धे तु समानाधिकरणाधिकारे कस्तुतीयापूर्वपद उत्तरपदलोपश्च on या. II. 1. 34 (Kielhorn's ed.), where the ब्रह्मसंहिता cites द्वावोदण (द्वाना उपमितो द्वापुणोऽथ ओदणः) as an example. Vide p. 140 and note 182 above on अर्धपणीय.

887. अथर्वकं पशून् मारणे नाशने वा स्वामिन्शोऽग्रमुत्तेत् । आप. घ. घ. II. 11. 28. 6.

888. पातयामहे ग्रामपते तया राज्ञश्च विजने । पण्यते ह्ये वा स्यात् पातयन् च किलिषी । स्वामिन् स्तुतिच. II. p. 207, वि. र. p. 172, अथर्वकं p. 772.

889. मृतेषु च निशुद्धिः स्वाध्यायश्चक्रादिदुर्ज्ञानात् । नारद IX. 17.

890. शूरीतमूलगो गोपातयन्तं स्वध्यायान्तिर्जने हने । ग्रामचारी दुर्परीक्ष्यः जलाकी च ननेच्छतः । स्वामिन् घ. by म्य. घ. p. 347, जलाकी means 'barber'.

that on all sides round a village, a *khureka* and a town an uncultivated space for pastures (between it and the fields) shall be kept respectively of 100, 200, 400 *dhanus*⁸⁹¹ in extent. *Kāt.* (666) prescribes that the owner of a field (which is near a forest) should construct a high paling before the crops have grown; for animals (or deer) when they have once tasted the sweet⁸⁹² (crops) can be warded off with difficulty. *Manu* VIII. 239 = (*Matsya* 227. 25), *Nār.* XIV. 41 prescribe that a hedge should be constructed for a field that is near a public way so high that a camel cannot look inside over it or a horse or cattle cannot jump over or so thick that a dog or boar should not be able to thrust its head inside it through holes. *Manu* VIII. 238 (= *Matsyapurāṇa* 227. 26), *Yāj.* II. 162, *Nār.* XIV. 40 provide that if a field situated near a village or a pasture or near a public road is not protected by a hedge and cattle straying into it cause loss, the herdsman is not to be held guilty. It is provided by *Āp. Dh.* 8. II. 11. 28. 5, *Manu* VIII. 240, *Nār.* XIV. 28, *Kāt.* 664-665 that if cattle enter into fields,⁸⁹³ parks or pastures that are situated near a village or a public road and are enclosed by a hedge, they may be seized or beaten off, the herdsman is to be fined (a hundred panas). *Yāj.* II. 159-161, *Manu* VIII. 241, *Nār.* XIV. 28-29, *Kāt.* 667 and others lay down that where cattle enter fields (not near a village or road) and cause loss, the herdsman is to be fined or whipped, the owner of the cattle is to make good the loss and

891. A *धनुः* is 4 cubits (or about 6 feet). *Manu* VIII. 237 ordains having a space of 300 *dhanus* round a city; it also says that the space round a village for pastures should be three throws of *śamyā*. *Āp. Dh.* S. 1. 3. 9, 6 and 23 employ the expression *शम्यापानस* for stating distance. *शम्या* means yoke-pin (*युगकीलक*). Vide p. 145 note 185 above for *dhanus* and other measures of distance. In E. I. vol. I. pp. 154-153 a *पारमेष्ठरीय हस्त* (the king's hand) is mentioned in an inscription dated *samvāt* 933 at Gwalior. A *दण्ड* was 4 *हस्त* but there were *दण्ड*s of 7 or 10 *हस्त*s. Vide *मिता.* on *पा.* II. 106. It was but natural that in ancient times man relied upon his own fingers or hand or height as a measure of length. Vide H. of Dh. vol. II. p. 209 n. 485 and n. 2021 (for *हस्त*, *दण्ड* and *निर्गन्त*), p. 1034 (for *Vēdi* being as much in length as the height of the sacrificer) and *puruṣa* as a measure of length in *तै. सं.* V. 2. 3. 1 and *कात्यायनश्रौत* 16. 8. 21-25. Vide also H. of Dh. vol. II. p. 289 n.

892. *अजालेभ्यो मरुषेभ्यः कुर्वादानरणे महत्* । इःशेनेह निवारणं लब्धत्वापुरसा युगः । *कात्या.* 666 q. by *अपरार्क* p. 770. *सूत्रिच.* II. p. 309.

893. *शिवारामनिर्गलेषु सुहेषु पशुपादिषु* । यत्र तत्प्राधानं तादृशं वा बृहत्तमं । *कात्या.* 664 q. by *सूत्रिच.* II. 208, *वि. र.* p. 241. *हिवा अजमादिनः कशेषु पशुषु* । *अथ.* प. II. 11. 28. 5.

pay the fine prescribed and the fines vary a. g. Yāj. II. 159 prescribes fines of 2, 4 and 8 māśas respectively when a goat or a cow or a she-buffalo strays and causes loss of crops, while Kāt. (667) prescribes only $\frac{1}{2}$ pana in the case of cows and sheep and $\frac{1}{4}$ in the case of she-buffaloes. Vide Gaut. XII. 19-22 and Kaut. III. 10 also. Those who purposely set cattle to eat or destroy crops were to be punished as thieves (Nār. XIV. 34).

Ancient India entertained tender feelings for certain animals and in certain circumstances. Nār. XIV. 30, Yāj. II. 163, Manu VIII. 242, Kaut. III. 10⁸⁹⁴ and Uśanas provide that cows within ten days after calving, a stud bull, a horse, an elephant, animals let loose in honour of ancestors or deities, and cattle that have strayed from the herd or that have no herdsman to look after them and have met with an accident are to be warded off when causing harm to crops, but the owner is not to be fined. Uśanas⁸⁹⁵ states that the reason for this leniency is that horses and elephants are protectors of people. Aparārka (p. 771) explains that this exemption applies only to the king's horses and elephants. Uśanas adds that (owners of) cows should not be fined when they cause some loss at the time of festivals and śrāddhas. The great veneration for cows led Uśanas to lay down that he who requires the owner of a cow to re-imburse the loss of crops that are eaten up or destroyed by a cow will find that his *pitrs* and the gods do not receive the offerings made⁸⁹⁶ by him. This is explained by the Par. M. III. p. 385 as referring to crops in fields near a village not enclosed by a hedge and by the Madanaratna to crops eaten at the time of śrāddha. Br., Yāj. II. 161 and Nār. XIV. 38 require the owner of the cow to re-imburse the owner of the crops for the loss as settled by the neighbours. Vide under 'steya' for cases in which there is no offence of theft even if a person takes certain things belonging to another without his permission.

894. वामदेववृषा वा अनिदेवादा वा पेयुवसानो योवृषाश्चावृण्णाः । अर्थशास्त्र III. 10.

895. अदृण्णवा हस्तिनो वाश्वाः रजपादा इति ते स्तुताः । अदृण्णवी कामकुम्भौ च ये शम्भुकुलसुतयोः ॥ अदृण्णवामनुवी नोभ्यं धृतिका वाजिसारिणी । अदृण्णवाश्चोत्सवे वासः आङ्गकाले तथैव च ॥ उद्गनसू. q. by मिता. on वा. II. 163, वि. र. p. 240. Compare Nār. XIV. 31-32 where two half verses are the same as in Uśana's. Manu VIII. 242 mentions देवपशून्, which Sm. C. II. p. 212 explains as 'देवपशोर्नाम देवताप्रतिमादीनां शीरस्मानाद्यर्थे तदुद्देशेन वृत्ताः'.

896. योभिर्भिनादितं धान्यं यो नरः प्रतिपाद्यते । पितरस्तस्य नादन्ति नादन्ति त्रिदि-
वीकसः ॥ उद्गनसू. q. by अपारार्क p. 770, वि. र. p. 232.

CHAPTER XXII

SĪMAVIVĀDA (boundary disputes).

This is called *keśarajīvāda*⁸⁹⁷ (disputes relating to fields) by Nārada XIV. 1, who defines it as 'dispute with regard to land in which questions about dikes or embankments, the boundaries of fields, ploughed land and fallow land have to be decided.' Nārada's idea appears to be that the word 'sīmāvivāda' in Manu is only illustrative and is a compendious way of mentioning disputes about land in general. According to Kāṭ. (732) there are six causes⁸⁹⁸ of land disputes viz. claiming more land, claim that a person is entitled to less than he possesses, claim to a share, denial of a share, seizing possession when previously there was none, boundary. In all these cases boundaries have directly or indirectly to be settled and therefore all these are included under the topic of *sīmāvivāda*. A boundary dispute may relate to the boundaries of a district (janapada), a village, a field and a house. Boundaries, acc. to Nār., may be of five kinds.⁸⁹⁹ They are described as follows: *dakṣiṇī* is what is indicated by trees which are like a flag-staff. Manu (VIII. 246-247) prescribes that trees such as *āśvattha*, the silk cotton, *sāla*, *tāla* (palmyra palm), that have milky juice (like *udumbara*) should be planted to indicate boundaries and also bamboo clumps, bushes, reeds &c. A *matsyī* (lit. having fish) boundary is provided by rivers flowing naturally and full of fish and tortoises or by tanks and reservoirs of water (Manu VIII. 248). A *nāthānī* boundary is one indicated by concealed signs (just as *nidhāna* i.e. treasure is concealed in the earth), such as pots filled with chaff, coal, bricks, bones and similar things that the earth does not corrode

897. सप्तकेदारमर्गादिकुलकुलनिधये । क्षेत्राधिकारो यस्तु स्याद्विवादः क्षेत्रजस्तु सः ॥
नारद XIV. 1. वि. र. p. 201 takes केदारमर्गादा as one word, while च. प. p. 353
holds *keśara* and *maryāda* separate. निकुलो लाङ्गलपल्लो देवाः, अकुलस्तु देवः ।
च. प. p. 353.

898. आधिक्यं न्यूनता चांशो अतिनास्तित्वमेव च । अभोग्यभुक्तिः सीमा च यद्वस्तु
सादृश्यं हेतवः ॥ कात्या. 732 q. by मिता, on वा. II. 150, वि. र. p. 201, अथवा p. 259,
च. प. p. 353. Vide the *mita*, and च. प. for explanations.

899. ध्वजिनी मतिपत्नी चैव नैधानी अपवर्जिता । राजसाधनसीता च सीमा यज्जनिषा
स्मृता ॥ नारद q. by मिता, on वा. II. 150.

in a vessel), embankments, anthills, platforms of stones or bricks (Manu VIII. 255, 256, Yāj. II. 151, Nār. XIV. 4-6). Vas. 16. 13, Kaut. III. 9, Yāj. II. 150, Manu VIII. 258, 260, Nār. (XIV. 2-3) prescribe that on failure of witnesses of the adjoining villages, neighbours (sāmanta),⁹⁰² old men, cowherds, husbandmen who plough the fields near the one in dispute, hunters, fowlers, fishermen, snake catchers and foresters should settle the disputed boundary in the presence of the king. The Mit. on Yāj.⁹⁰³ II. 153 quotes Kāt (743-745, 51) to show that witnesses were divided into sāmanta, manūta, vṛddha and udhṛta, each preceding group being superior to the succeeding. The Mit. further says that the neighbours as witnesses are to be arranged in the form of the layers of the petals of a lotus viz. the nearest ones (samsaktaka) are those most preferred, (but if this group has faults) then a second but a more removed group and then a third group still more remote may be examined. Sāṅkha-Likhita and Vas.⁹⁰⁴ 16. 13-15 prescribe that in boundary disputes the decision depends on neighbours, in the case of conflict of witnesses on documents and then on the old men in the town or village and the guilds. Yāj. II. 152 and Manu VIII. 258 require that the neighbours who are to settle the boundary should be four, eight or ten (even in number) and inhabitants of the same village (if possible). Br. (S. B. E. 33 p. 352 verse 14) requires that the witnesses⁹⁰⁵ should know the source of title (to the disputed land), the measurement (in *niartanas*, *dhanyas* &c.), the length of enjoyment or possession, the names of persons (in possession) and the characteristic geography or lie of the land. The general rule was (as stated by Nār. XIV. 9)

902. समन्ताद्भवाः सामन्ताः । चतसृषु दिवसनन्तरग्रामादपश्ये च पतिर्सीमे व्यवस्थिताः-ग्रामो ग्रामस्य सामन्तः श्रेष्ठं श्रेष्ठस्य कीर्तितम् । यदा दृष्टस्य निर्दिष्टं समन्तात् परिरम्य हि ॥ इति कात्यायनवचनात् । ग्रामादिशब्देन तत्पथाः पुरुषाः लक्ष्यन्ते । मिता, on वा. II. 151.

903. तेषामभावे सामन्तमौलपृष्टोदपृतादयः । स्थावरे वदप्रकारेणै कार्यो नात्र विचार्यता । कात्या. 737, q. by मिता, on वा. II. 152, वि. र. 206.

904. दृष्टश्रेष्ठविरोधे सामन्तप्रत्ययः । सामन्तविरोधे लेखप्रत्ययः । प्रत्यभिलेखपविरोधे ग्रामनगरपृष्टश्रेष्ठप्रत्ययः ॥ वसिष्ठ 16. 13-15 : दृष्टश्रेष्ठविरोधे सामन्तप्रत्ययः । सामन्तविरोधे अभिलेखप्रत्ययः अभिलेखपविरोधे ग्रामनगरपृष्टश्रेष्ठप्रत्ययः ग्रामनगरपृष्टश्रेष्ठविरोधे दृष्टश्रेष्ठपृष्टकम्पय राजविप्रस्थात् । शङ्खुलितवित्तं q. in वि. र. p. 208. स्वार्थसिद्धौ पटुषु सामन्तैरुपधारयत् । तत्संसक्तैस्तु कर्तव्य उद्धारो नात्र संशयः । संसक्तसकृदोपे तु तत्संसक्ताः प्रकीर्तिताः । कर्तव्या न पटुष्वस्तु राज्ञा धर्मे विजानता । कात्या. q. by मिता, on वा. II. 152.

905. आगमं च ग्रामार्थं च भोगकालं च नाम च । दृष्टावतलक्षणं चैव ये विदुस्तैश्च साक्षिणः । बुद्ध. q. by मिता, on वा. II. 152, परा. भा. III. p. 392, म्य. य. p. 355. Some works read योगं कालं च.

that a single witness however confident he might be (or however reliable) should not take upon himself to point out and settle the boundary, since this (boundary) dispute being a very important (difficult) matter, its decision should rest with many. The Mit. (on Yaj. II. 152) explains that this prohibition holds good only if the single witness is one not accepted by both sides as reliable. But Nār. (XIV. 10) and Br. (S. B. E.⁹⁰⁶ 33 p. 352 verse 11) hold that where a single witness accepted by both sides has to settle the boundary (in the absence of more witnesses and in the absence of reliable patent or concealed signs) he should do so after placing a clod of earth on his head, after being dressed in red robes and wearing red flowers and after observing a fast. If it was a śūdra who was to trace or lay down a boundary Visvarūpa⁹⁰⁷ on Yaj. II. 156 quotes a prose passage of Brhaspati that he was to be decked in red pieces of cloth, his face was to be smeared with ashes from a cemetery, a mark was to be made on his chest with five fingers dipped in the blood of a goat and the entrails of the sacrificed goat were to be tied round his neck and he was to hold a clod of earth in the right hand. All this was to impress upon him the gravity of the work and the necessity of doing his best impartially. If no knowing witness or no patent or concealed signs are available the king has himself to settle the boundary between the two villages at his own discretion (Yaj. II. 153, Nār. XIV. 11, Manu VIII. 265). He may divide the land between the two villages equally and construct new marks of boundaries, but if the disputed land will be of greater benefit to one village than to the other the king may assign the whole of the disputed land to the former. Manu VIII. 245 prescribes that when there is a boundary dispute between two villages the king should decide it in the month of Jyestha when the embankment (marks) become quite clear (owing to water being dried up in summer). The decision made by the witnesses or neighbours became final only after the lapse of three weeks if no calamity (from act

906. ज्ञातुर्चिह्नैर्विना साधुरेकोऽप्यनपसंमतः । रक्तमात्राभ्यन्तरधरो सुदमादाय सूर्यनि ।
सत्यव्रतः सोपवासः सीमाने दर्शयिष्यते । बृह. ५. by स्मृतिक. II. p. 231, या. भा. III.
p. 323, अथ. प. p. 359. Ms. of मदनमोहन reads सीमान्तम्.

907. सूत्राणां तु पञ्चाह बृहस्पतिः । यदि सूत्रो नेता स्थानं क्रैष्येनालङ्कारेणालङ्कृत्य
अवनस्मना मुखं विलिङ्गमाग्नेयस्य पशोः शोणितेनैरसि पञ्चाङ्गुलानि कृत्वा द्वीपावामान्त्राणि
प्रतिमुच्य सत्येन याजिना सीमालोटे सूर्यनि धारयेदिति । रक्तकर्पूरमसनादिः क्रैष्योल्ङ्कारः ।
विश्वस्मप.

of God or king) befell the witnesses (Kāt. 751).⁹⁰⁸ Manu prescribes (VIII. 261) that the boundary settled by witnesses should be fixed by the king (or recorded in a document containing the names of witnesses). An ancient instance of the fixing of boundaries by two feudatory chiefs is recorded in the Bhumara stone Pillar inscription of the Parivrajaka Mahārāja Hastin and Mahārāja Śarvanātha, who erected a pillar at Ambhoda to show the boundary between their territories about 510 A. D. (vide Fleet's Gupta Inscriptions No. 24 p. 110). Vide also E. I. vol. 24 pp. 32-34 for inscriptional evidence about the carrying out of all the details laid down in dharmasāstra works on the settlement of boundaries. Manu VIII. 263, Yaj. II. 153, Nār. XIV. 7 prescribe the middle amercement for each one of the *sāmantas* that falsely settle the boundaries, while Manu (VIII. 257) and Nār. XIV. 8 prescribe the first amercement only for other witnesses such as members of corporations and elderly villagers. If through friendship, greed or fear the witnesses who know the facts do not come forward to settle the boundary they are each to be fined in the highest amercement (Kāt.⁹⁰⁹ 750).

Bṛ. (S. B. E. 33 p. 353 verses 19-21) lays down certain interesting rules about alluvion and diluvion. Where a river is the boundary between two villages and the river carries away soil from one village and attaches it to another, the accretion belongs to the village to which it becomes attached, but this is so when the soil carried away has no crops growing on it; if however soil with growing crops is separated from a village and joined to another by a river in flood, the former owner can reap only the crops and the land will belong to the village or field to which it has become attached⁹¹⁰.

908. सीमाचङ्कनमे कोणे वादुषधे तथैव च । त्रिपलपलसमाहं दैवराजिकमिष्यते । कात्या. 751 q. by मित्त. on वा. II. 152, V. P. (p. 359) adds 'यथासंख्यमिति शेषः'.

909. बहुनां तु रुद्धीतानां न सर्वे निर्णयं यदि । कुर्युर्भाषाया लोभाया दाप्यास्तुतम-साहसम् ॥ कात्या. 750 q. by मित्त. on वा. II. 152, अथार्क p. 763.

910. ग्रामयोद्धमयोपेव सर्पादा कल्पिता नदी । कुर्वते दानद्वरणं भाग्यभाग्यवशान्-पाम् । एकत्र कुलपातं तु सुमेरुवच्च संरिचयिम् । नदी तीरे नकुर्वते तस्य तां न विचालयेत् । श्रेष्ठं संशयमुल्लङ्घ्य भूमिनिष्ठया यदा भवेत् । नदीस्रोतःप्रवाहेण पूर्वस्वामी लभेत् ताम् । इह. q. by इमुनिच. II. p. 234, परा. मा. III. pp. 398, 399, वि. र. 217, अ. य. p. 362; the latter explains: तस्य नदीवशात्पातभूमिकस्य तां मातां भूमिं न विचालयेत् नान्यथा कुर्वीत पूर्वस्वामी भाग्यचिन्त्यादिरपथे । एतदुल्लङ्घ्यतीरनिषेधम् । उत्तरीरनिषेधे पुनः स एव-शेषः । तां संशय-भूमिम् । उत्तरीरफलदाभायर्पयन्तमेतत् । तत्फलदाभाभन्तरं तु न पूर्वस्वामी तां भूमिं लभेत् इत्यप्यन्तरपथम् । The वि. र. p. 217 holds a different view: 'यत्र तु नदी शेषादिकं समुल्लङ्घ्य याति तत्र पूर्वग्रामरपेव सा भूमिरिति शेषः'.

Manu VIII 262, Yaj. II. 154, Nār. XIV. 12, Kāt. 749 prescribe that the decision of disputes about the boundaries of fields, wells, tanks, groves and parks, palaces, houses, cottages, temples and channels carrying rain water is to be similarly arrived at by the testimony of witnesses (*sāmantas* and others).

Several rules are laid down by Nār., Br. and Kāt. about easements and water-courses.

Br. (S. B. E. 33 p. 354 verse 24) prescribes that no⁹¹¹ interference should be caused to the manner of the enjoyment of houses (as regards doors, compounds &c.), to the enjoyment of water and markets in the way in which they had been enjoyed from the time the village or house was established or built. This means, acc. to the Sm. C. II. p. 234 and V. P. p. 363 that if a new mode of enjoyment is started in the case of these after the village was established or the house was built then interference may be allowed. Br. (S. B. E. 33 p. 354 verse 25) further says that ancient windows,⁹¹² watercourses, balconies (pegs?), raised platforms on the borders of streets, waterspouts carrying rainwater from a square of houses (and cottages) enjoyed from former days should not be allowed to be interfered with, even if they might cause some inconvenience to the neighbouring house. Kāt. (752-753) similarly provides 'one should not interfere with the base of the wall, a drain (or waterspout), a balcony, window, watercourse and dwelling house of another. These are not to be added to one's house after the first building of it (so as to cause obstruction or annoyance to another), one should not open a window⁹¹³ (so as to command a view) in the interior of another's house or open a spout (that will drain off

911. निवेशकालादारम्भं गृहवासोपपन्नादिकम् । तेन वाच्यस्य मुक्तं तस्य तत्र निष्काल-
येत् । वातायनं यज्जाली च तथा निर्गुहवेदिकाः (निर्गुह ?) । चतुःशालस्वन्दिकाः पाद-नि-
विष्टा न चालयेत् ॥ बृह. II. 4. by अपराजित् p. 764. स्मृतिच. II. p. 235, स्प. न. p. 363.
'एवं निवेशकाले कल्पितं महासादिकं याविशेषानिदकार्पि न केनचित्कालानीपमित्याह
म एव' स्मृतिच. II. p. 235; निर्गुहो द्वारनिर्मितकाष्ठनिष्ठ इति कल्पकल्पसूत्रे निर्गुहो
गृहकोण (गृहपोभा ?) इति स्मृतिचन्द्रिकायाम् । वेदिका रजवादिपदार्थसंस्कृतोत्तरा भूमिः ।
स्प. न. p. 363. These words are taken from the मदनमाला.

912. Compare section 15 of the Easements Act (Act V of 1882) for the acquisition by prescription of easements of light and air for a building, of support or of right of way &c.

913. 'One should not open a window &c.'—This right of privacy is recognised even now by the courts as enforceable in Gujerat. Vide *Nathubhai v. Chhaganlal* 2 Bom. L. R. 454, *Maneklal v. Mohanlal* 22 Bom. L. R. 225.

water) on to another's house. One should construct places (pits) for depositing ordure, urine and filthy water, a fireplace and a pit at a distance of at least two cubits from the walls of other people (his neighbours) and should not construct these very near to another's house' (vide also Br. S. B. E. vol. 33 p. 354 verses 25-26).

Br. (S. B. E. 33 p. 354 verse 27) defines a *saṁsāraṇa*⁹¹⁴ as the road by which men and beasts pass to and fro without let or hindrance. Kāt. (755) calls it *catuṣpātha* and defines *rāja-mārga* as the road by which people are allowed to pass at certain times (and not at all times). Several rules are prescribed by Kautilya and others for obviating nuisances on public roads or near private houses. Br. (S. B. E. 33 p. 354 verse 28) and Kāt. (756) provide that roads should not be obstructed by parking⁹¹⁵ carts and the like thereon, that no one should plant anything on a public road, that a man who puts obstruction on the public road, makes pits or plants trees or wilfully voids excrement thereon should be fined a *māṣaka*, and one who does not give⁹¹⁶ precedence on the road to his *guru*, preceptor or the king should be fined. Manu IX. 282 prescribes the fine of two *kārṣāpayas* for voiding or dropping ordure on the public road in the absence of distress and requires the wrongdoer to clean the road, but Manu (IX. 283) makes an exception in the case of persons diseased, very old men, a pregnant woman and a child, who are not to be fined but only reproved for voiding ordure on the road. Vide Matsya 227. 175-76 for the same two verses. Kaut. II. 36⁹¹⁷ prescribes the fine of $\frac{1}{2}$ of a *pāṇa* for throwing dust on a cart-road and $\frac{1}{2}$ for obstructing it with mud and a fine double of these

914. पान्थयायान्ति जना येन पशवश्चानिवारिताः । तदुच्यते संसरणं न रोद्धव्यं तु केनचित् । बृह. ५. by अपराक p. 765, स्मृतिच. II. p. 233; सर्वे जनाः सदा येन ययान्ति स चतुष्पथः । अनिषिद्धा यथाकालं राजमार्गः स उच्यते ॥ कात्या. 755 ५, by स्मृति. II. p. 235, वि. र. 221.

915. यस्यच सङ्घर्षे भवेत् कुक्षारोपणमेव च । कामाक्षुरीषं कुर्वाणं तस्य दण्डस्तु मायकः । बृह. ५. by अपराक p. 765, स्मृतिच. II. p. 235; वि. र. p. 221 ascribes this verse to कात्या. and notes that हरिहर and others ascribe it to यज्ञायति. न तत्र रोपये-
त्किञ्चिदोपदृष्टाय केनचित् । सुर्वार्चार्चपादीनां मार्गोदानास्तु दण्डभाक् ॥ कात्या. 736 ५, by वि. र. p. 221.

916. For precedence on the road, vide H. of Dh. vol. II. pp. 146-147.

917. पांशुपथाने रक्षायामदभानो दण्डः । पशुदकसंनिरोधे पादः । राजमार्गे द्विगुणः । दण्डस्थानोदकस्थानदेवपृष्ठराजपरिवर्तुषु पणोत्तरा विष्टादण्डाः । मूत्रेष्वथदण्डाः । भेदवप्या-
धिभयनिमित्तमदृष्ट्याः । अर्धशास्त्र II. 36.

for doing the same on a royal road; prescribes a fine of one, two, three or four *panas* respectively for voiding ordure on or near a holy place, or a place whence water is taken, or a temple or the king's buildings and exempts from fine such persons as those mentioned in Manu IX. 283. Kāt. (758-759) provides⁹¹⁸ that he who defiles a tank, a garden or holy water (or *ghats*) by throwing filthy matter (ordure &c.) therein should be made to remove the filth and fined the first amercement and also one who pollutes by washing soiled clothes in holy and purifying sacred places (*ghats* &c.) established by great or saintly persons. Yaj. II. 155 prescribes the first, the highest and middling amercements respectively for making breaches in the boundary (between two or more fields), for ploughing a field beyond the boundary of one's field and for depriving a man of his field by intimidation and the like. Vide also Visnu Dh. S. V. 172 and Śāṅkha-Likhita⁹¹⁹ who prescribe a fine of 1008 *panas* for transgressing (the whole of) the boundary (of a field). Manu VIII. 264 (= Matsya 227. 30) provides a fine of 200 *panas* for seizing another's field, garden or house through inadvertence, but 500 for seizing any one of these by intimidation. Nār. XIV. 13-14 and Kāt. (760-761) state⁹²⁰ that the fruits and flowers of those trees that grow on the boundary between two fields should be declared (by the Judge) as joint between the owners of the two fields and that if the branches of trees growing in one man's field spread over another man's field that man should be understood to be the owner of the trees and branches (together with fruit &c.) in whose field the trees are born (have taken root). The first proposition implies that if one owner

918. तत्रागोद्यानतीर्थानि योऽन्नेधेन विनाशयेत् । अन्नेधे शोधयित्वा तु दण्डयेत् पूर्व-
साहसम् ॥ दूषयेत्सिद्धतीर्थानि स्थापितानि महात्मभिः । दूषयानि पावनीयानि मनुष्यान् पूर्व-
साहसम् ॥ कात्या. q. by अपराकं p. 765, स्मृतिच. II. 235, स्व. प्र. p. 365.

919. सीमापत्तिकमे त्वदसाहसम् । शङ्खलिखित q. by स्मृतिच. II. p. 236, स्व. प्र. p. 366; सीमाभेदारुहृतमसाहसं दण्डयित्वा पुनः सीमां लिङ्गान्गिरां कारयेत् । विष्णुधर्मसूत्र V. 172, which स्मृतिच. II. p. 236 explains as 'तत्र सीमाभेदारुहिरूपस्य सीमावृत्तत्वे कर्षकनियमार्थोऽप्यवसेयः । सीमापदेऽपि पुनः कर्षणाद्यकरणमेव पुनः सीमाकरणम् । तद्यथा भवति तथा राजा यतेति पुनः सीमां कारयेदित्यस्यार्थः', The text in Mr. Gharpure's ed. is corrupt.

920. सीमामध्ये तु जातानां वृक्षाणां क्षेत्रयोर्द्वयोः । कलं दुष्पं च सामान्यं क्षेत्रस्वामिदु-
निर्दिशेत् । अन्यक्षेत्रे तु जातानां शाखा यत्रान्यक्षेत्रिण्यः । स्वामिनं ते विजानीयादस्य क्षेत्रदु-
संभिताः ॥ कात्या. 760-61 q. by अपराकं pp. 766-767, स्मृतिच. II. p. 236, नि. र. 223. नारद XIV. 13-14 are almost the same, reading स्वामिन्स्त्वा विजानीयादस्यक्षेत्र-
विभर्गताः .

alone takes all the fruits he is liable to be fined for taking half the fruits.

A *setu* (watercourse) is said by Nār. (XIV, 18) to be of two kinds, viz. that which is dug (*kheya*) into the soil in order to drain off excessive water and that which is constructed (*bandhya*) as an embankment to prevent water from flowing away. Yāj. II. 156 and Nār. XIV, 17 provide that a *setu* made by the owner of one field in the neighbouring field should not be forbidden by the owner of that field, if the loss of soil it causes (to the latter) is small as compared with the great benefit that it may confer. Nār. (XIV, 20-21) and Yāj. II. 157 prescribe that one should make a dike or watercourse on another's land with the permission of that man or with the permission of the king as otherwise he cannot reap the benefit thereof. Kāt. (762-63) provides a similar rule about the repairs to a house or garden or tank made by a stranger without the owner's or the king's permission. It is stated by Nār. (XIV, 23-25) that when the owner of a field is unable (to cultivate it) or is dead or is not heard of, if a stranger cultivates the field without objection from any body, the stranger shall enjoy the produce of the field, that if the owner (or his son) returns while the field is being tilled by a stranger, he can get his field back on repayment to the stranger of all the money expended on making the land (ready for crops). If the owner is unable to return the expenses, the stranger may retain $\frac{1}{4}$ th of the produce every year for eight years giving $\frac{3}{4}$ th to the owner every year and should hand over the field to the owner when the 8th year arrives. Yāj. II. 158 and Vyāsa provide that if a person takes a field from the owner on rent for cultivation, but gives up the cultivation after slightly ploughing it and does not employ someone else to complete the cultivation, then he should be made to pay the produce that would have been recovered from the field if properly cultivated and also should be fined and the field may be taken from him and given to another tenant⁹²¹.

921. केने पुरीत्वा यः कश्चिन्न कुर्वाणश्च कारवेत् । स्वामिने स शब्दं दात्वेन राज्ञे दण्डं च तत्समम् ॥ व्यास श्रु. by वि. वि. p. 65, श्रु. य. p. 368; स्मृतिच. II, p. 338; परा. मा. III, p. 408 ascribe this to वृह.

CHAPTER XXIII

VĀKPĀRUSYA AND DAṆḌAPĀRUSYA

(Abuse and defamation; assault)

Vākpārusya, daṇḍapārusya, steya, strisaṅgrahana, sāhasa are five titles out of 18 that are concerned with what may be called criminal matters or crimes in modern nomenclature. Vide under *sāhasa* below.

Nār. XVIII. 1 defines *vākpārūṣya* as 'abusive words that loudly proclaim censure of another's country, caste, family and the like and that cause mental pain or offence to that man.' Kāt. (768) defines it as⁹²² consisting in making the sound 'hum' (of defiance) before another or coughing before him, of imitating or uttering before another whatever is censurable according to popular notions. Nār. (XVIII. 2-3) says that abuse is of three kinds, *niṣṭhura* (reproachful such as calling a man a fool or a rogue), *aiśīla* (obscene or insulting), *tīra* (mercilessly severe such as charging a man with such grave sins as brāhmaṇa-murder or drinking liquor) and that the punishment for each later one is more severe than for each preceding one. Examples of the abuse of country, caste and family are respectively 'the Gaudas are quarrelsome', 'brāhmaṇas are extremely greedy', 'persons of the Viśvāmītra gotra commit cruel deeds'. Br. (S. B. E. vol. 33 p. 355 verses 2-4) divided vākpārusya into three kinds viz. lowest (when the country, caste or family of a person is abused or sinfulness is ascribed without specifying any definite act), middling (speaking that the abuser will have sexual intercourse with the mother or sister of the abused or ascribing the commission of *upapātaka*s⁹²³ or minor sins to the abused), highest (charging him with taking forbidden food or drink or mercilessly exposing or ascribing the grave sins to a person). Various fines are prescribed in the smṛtis that depend upon the above distinctions and also on the castes of the abuser and the

922. दुष्टानः कामनं चैनं लोके वचनं निगर्हितम् । अयमुपावृणुष्वयाह वाक्यादयं तदुच्यते ॥ कात्या. (768) q. by अपरार्क p. 805, स्मृतिच II. p. 6.

923. For *upapātaka*s vide Manu XI. 59-66 (such as *govadha*, adultery), Yāj. III. 234-242, Viṣṇudharmasūtra (37) which contain long lists of them.

abused. For example, Manu VIII 267 (= Nār. XVIII 15 = Matsya 227, 66) prescribes the punishments of 100 panas, 150 or 200 panas, corporal punishment respectively against a ksatriya or a vaiśya or a śūdra abusing a brāhmaṇa and conversely Manu VIII 268 (= Nār. XVIII 16) provides that a brāhmaṇa calumniating a ksatriya, vaiśya or śūdra should respectively be fined 50, 25 or 12 panas. In the case of the abuser and the abused being of the same varṇa the fine for ordinary abuse is 12 panas, but double of this if the abuse is, according to Manu VIII 269 (= Nār. XVIII 17), foul (relating to mother, sister &c.). Vide Yāj. II 206-207, Viṣṇudharmasūtra V. 35. From the remarks of the Sm. C. and the Madansaratna it appears that these discriminating provisions²²⁴ based on the caste²²⁵ and the ascription of minor or grave sins had become a dead letter and were not being enforced by the kings in India by the 12th century A. D. at least. One or two matters, however, may be noted. Manu VIII 268-272 and 274 are the same as Nār. XVIII 16-17, 22-24. Even the truth of an imputation²²⁶ afforded no complete exemption e. g. if a person angrily calls a man a thief (who was once convicted of it) or speaks of him as blind or cripple, the former would be fined at least one kārṣāpana (Manu VIII 274 = Nār. XVIII 18). Kaut. (III 18) provides in this case three panas²²⁷ as fine and Viṣṇudharmasūtra (V. 27) two panas. When the

224. एवं जातिमुपयोर्विधिविशेषदर्शने तथा प्रथममध्यमोत्तमभावेन विधामिहित-
वाक्यारूपपर्यन्तमेदृशदर्शने तथा निष्ठुराश्लीलतीव्रत्वादिवक्त्रारूपविशेषदर्शने तथा भुताभि-
जनदेशकर्मशरीरपुत्रमाधुर्गच्छपिषेपविशेषदर्शने तस्मिन्मनोपेक्षावच्छब्दविधापिकाः स्मृतयो
वद्यपि वचःसमुच्चयकारैः समुच्चिता अस्माभिस्तु संप्रति तद्वर्थावृत्तानिष्ठप्रजाशिक्षका-
भावाद् दृष्ट्वा ह्यवधिसरपक्षिमां भुविति न समुच्चिताः । स्मृतिच. II. p. 327. The
words from भुताभिजन up to संप्रति occur also in sm. vi. p. 479, which winds up
as 'संप्रति तद्वृत्तानामावाद् ग्रन्थविरततः (= इति) किमर्थमित्युपरतम्' ; यद्यपि वाक्यारूप-
द्वयवारकव्यवर्तिविषयभेदान्नेपि दृष्टविशेषाः स्मृतिभिरुपदिष्टाः सन्ति तथापीदानीन्तने
राजभिः प्रजाशोभप्रसङ्गेन तादृशद्वयं कर्तुमशक्यत्वाद् उपपन्नानां निरर्थकग्रन्थविर-
तभावाद् अस्माभिः संस्मृताः । (मदनमल्ल at the end of दृष्ट्वावच्छब्दः).

225. Vide ताण्ड्यब्राह्मण 14. 6. 6. for an abuse as to varṇa 'वासश्च मेधा-
तिविष्य काण्वावस्तो तं वत्सं मेधातिधिराक्रोशद्वज्राग्रयोसि शूद्रावुच इति ।'

226. Compare sec. 499 of the Indian Penal Code, exception one, which
provides that the mere truth of an imputation does not exonerate a man
from the charge of defamation, unless the imputation is uttered for the
public good.

227. शरीरगृहातिवृत्तवृत्तिजनपदानां शरीरोपवादेन काण्वज्रादिभिः साये विषयो
दृष्टः । मित्रोपवादे वदपयो दृष्टः । शोभनाशिक्षित इति काण्वज्रादीनां स्मृतिभिर्गुण-
वाद्गणयो दृष्टः । अर्थशास्त्र III. 18.

imputation is false all provide for a fine double of that provided in case the imputation is true. Ironical praise of a man (such as describing one who is blind or one eye as one endowed with a beautiful eye) is made punishable by Kaut. (III. 18). To warn⁹²⁸ a man against associating with a person who is guilty of a grave sin or of theft does not entail punishment if the truth of the imputation be established (Kat. 776). Acc. to Kaut. and Kat. (775) the king was to award only half the fine prescribed if the accused said 'what I uttered in abuse was done through ignorance, carelessness, rivalry or friendship; I shall not again do so'⁹²⁹. A person who abuses a king doing his duty was to have his tongue cut off or forfeited all his property (Nār. XVIII. 30, Yaj. II. 303). Āp. II. 10, 27, 14 prescribed for a śūdra that abused any one of the three higher castes leading a religious life the punishment of the cutting of the tongue⁹³⁰.

Dandapārasya (assault). Kaut. III. 19 begins his treatment of this topic by saying that it comprises touching, threatening to strike and actually striking another⁹³¹. Nār. XVIII. 4 defines it as injuring the limbs of another with the hand, foot, weapon or other means (such as stones) or defiling or causing pain by (bringing) ashes and similar substances in contact with another. The Mit. on Yaj. II. 212 explains that even causing injury to animals and trees would fall under this title. Nār. XVIII. 5-6 provide that assault may be of three kinds viz. mild, middling and highly punishable according as a person merely makes preparations to assault or attacks without any qualm or causes a wound and that this crime can further be divided into three kinds according as the object attacked is low in value or middling or high. A verse from the Parisiṣṭa (quoted by Sm. C. II. p. 327 and V. P. p. 370) states 'whoever causes pain or draws blood, wounds, breaks, cuts off, pierces (the limbs or bodies) of living beings is guilty of *dandapārasya*'. According to Br. (S. B. E. vol. 33 p. 357 verse

928. यत्र स्वात्यखिलसार्थं पतितस्त्वेन (पतितस्त्वेन ?) कीर्तनम् । यत्कमाजत्र न स्वास्तु दोषो यत्र विभावयेत् ॥ कात्या. (776) q. by स्मृतिसू. II. p. 327, वि. र. p. 238. Compare exceptions 9 and 10 of sec. 499 of the I. P. C.

929. मोहात्पमादासहृद्यात् प्रेरया प्रोक्तं मयेति यः । नाहर्मेव दुर्गन्धेन दण्डार्थं तस्य क्षत्त्ययेत् ॥ कात्या. 775 q. by वि. र. p. 246, वि. कि. p. 70 (both ascribe to कात्या. and उद्गमस्मृ.). स्मृतिसू. II. p. 327, श्र. म. 229, श्र. य. p. 184 ascribe to उद्गमस्मृ. alone. यमादमदमोहाद्विनिरार्थदण्डाः । अर्थशास्त्र III. 18.

930. त्रिहोत्रोद्वनं शूद्रस्वार्थं धार्मिकमाक्रोशतः । आप. य. सू. II. 10, 27, 14.

931. दण्डपारस्यं स्वर्गोन्ममवर्ण्यं ज्ञानमिति । अर्थशास्त्र III. 19.

1) *daṇḍapārusya*⁹³² consists in striking (a person) with the hand, with a stone, a club, ashes, mud, dust or a weapon. The Mit. on Yaj. II 212 following Nār. XVIII. 7-12 lays down certain propositions about both abuse and assault. A person who does not return abuse or does not assault when abused or assaulted, deserves to be commended; if he returns the abuse or assaults in return, the person who began the quarrel is to be dealt with more severely than the other. When two persons⁹³³ attack each other and there are no means for finding who began the quarrel equal punishment is to be awarded to both; but when two quarrel he who began the quarrel or he who persists longer than the other is to be fined more than the other party and lastly if men of the lowest⁹³⁴ castes such as *śvapāka*, *meda*, *cāṇḍāla*, hunters, elephant riders, *vṛātyas* and *dāśas* (slaves) assault respectable men and *ācāryas* then they are to be punished (whipped) by good men then and there, but if such punishment is not possible, then the king should award corporal punishment (of various kinds according to the nature of the crime) and should not take fines from them, since they are the foulest among men and their wealth also is foul. Kāt. (783) and Br. (S. B. E. 33 p. 359 verse 15) are to the same effect. The several *smṛtis* lay down various punishments for various kinds of assaults but no useful purpose will be served by going into details. Kāt.⁹³⁵ (786) provides that just as in abuse punishments depend on the castes of the abuser and the abused so also in assaults higher punishment is to be awarded if the attacker is of a lower caste than the person attacked or lower punishment if the person attacked is of a lower caste. Manu VIII. 286 and Uśanas⁹³⁶ lay down that the punishment for the offence should be commensurate with

932. दण्डपाण्डुत्वेनैवैर्ममकदेमर्षाशुभिः । आपुषैश्च महर्णे दण्डपाण्डुमुच्यते ॥ बृह. q. by वि. र. p. 259.

933. द्वयोः महर्तोर्दण्डः समोस्तु समः स्मृतः । आरम्भकोऽनुवर्ग्यी च दाप्यः स्वादधिकं दुमय ॥ बृह. q. by अपराकं p. 812, वि. र. p. 275.

934. असुहृदपुत्रदाम्नी म्लेच्छानां पापकारिणाम् । अतिलोमभृतानां ताहनं नार्थतो दुमः ॥ कात्या. q. by अपराकं p. 813, वि. र. p. 278 ; अतिलोमपातथा चान्द्राः दुहपाणां मलाः स्मृताः । बाह्यजातिक्रमे वध्या न दातव्या धने कश्चित् । वि. र. p. 277.

935. दाण्डपाण्डुत्वे पण्यैवेकाः अतिलोम्यास्तिलोमतः । तथैव दण्डपाण्डुत्वे वात्या दण्डावधाकनम् ॥ कात्या. 786, q. by परा. मा. III. p. 418, वि. र. 269.

936. यत्र नोक्तो दुमः सर्वेयमन्यदातु महात्मनि । तत्र कार्यं परिज्ञाप कर्तव्यं दण्डधारणम् । उक्तानम् q. by स्मृतिच. II. p. 328 (which explains कार्यं यानिषु प्राप्यन्तरेत्यादितं दुःषम्).

the pain or injury caused by the offender to a man or beast. A few examples may be set out. Probably the oldest reference to fines for assault in Sanskrit literature is contained in the Taittiriya Samhita⁹³⁷ II. 6. 10. 2: 'He who threatens to strike a brāhmaṇa shall be fined with a hundred (cows or niskas?), he who strikes a brāhmaṇa shall be fined with a thousand; he who draws blood from him shall not behold the *pīṭra*s for as many years as there are particles of dust mixed with the blood that falls on them'. This passage is interpreted in Jai. III. 4. 17 as being a recommendatory injunction (*puruṣārtha*) to all at all times to desist from assaulting a brāhmaṇa. Gaut. (21. 20-22) and Manu XI. 206-207 appear to take the Tai. S. passage differently and refer the figures of 100 and 1000 to years. Kaut. III. 19 prescribes various fines for various kinds of assaults. Br. (S. B. E. 33 p. 357 verses 2, 3 and 7) says that if a person throws ashes or the like at another or beats him with the hand the fine should be one *māṣa*, but if he strikes with a brick, stone or stick the fine should be two *māṣakas*; this however applies when both are of the same caste, but if he assaults a woman who is another's wife or a person of a higher caste, the fine may be higher and higher. For one who bruises the skin of another or draws blood by assault the fine is one hundred *paṇas*, and for him who causes a wound by removing some flesh the fine is six *māṣakas* and he who causes breaking of bones should be banished (Manu VIII. 284 = Nār. XVIII. 29). Kāt. prescribes the highest amercement for cutting off the ear, the lip, the nose, the foot, the eye, the tongue, the penis, the hand, and the middle amercement for causing injury (or wounding). Gaut. XII. 1, Kaut. III. 19, Manu VIII. 279, Yāj. II. 215, Br. provide the punishment of the cutting of that limb with which a *sūdra* strikes a person of the three higher castes. And the Mit. on Yāj. II. 215 applies by analogy the same rule to a *vaiśya* striking a *ksatriya*. Manu VIII. 280 extends the same punishment to a *sūdra* for

937. ये ब्राह्मणावापयुराते तं शतेन पादपात्, यो निहत्य स हस्तेन पादपात्, यो लोहितं करण्णान्नसक्यं पाद्वत् संयुद्धासावतः संतस्तरान् पितुर्लोकं न वजानादिति । तस्माद् ब्राह्मणाय आपयुरेत न निहत्य पाद्वं लोहितं कुपात् । ते. सं. II. 6. 10. 2.

938. अथैव च सर्वपरिधानात् । जै. III. 4. 17. शबर's conclusion is: सर्वान्वस्त्रस्य ब्राह्मणस्यापि प्रतिषेध उक्तः. न दर्शपूर्णमासगतैरेव नाशमोरेणादि कर्तव्यमिति ।

939. सूद्रो द्विजातीनभिसम्भावाभिहाय च वाग्दण्डपादस्वाभ्यामङ्गुलीभ्यां येनोपहृत्वात् । मौ. XII. 1; सूद्रो येनाङ्गेन ब्राह्मणमभिहाय च दण्डेत् । अथ पूर्णं निष्कयः । स्वर्शानार्थदण्डः । अर्थशस्त्र III. 19; येनाङ्गेन द्विजातीनो सूद्रः गृह्यते कथा । उक्तस्य तत्तद्वाक्यं तस्मोरनुशासनम् ॥ बृह. ७. by सूतिच. II. p. 328.

merely raising the hand or a club to strike one of a higher caste. Manu VIII. 281-283 (= Nar. XVIII. 26-28) provide that a person of a low caste defiantly sitting on the same seat with one of a higher caste was to be first branded on the waist and then banished or his hips were to be gashed (in such a way that he might not die), that a śūdra defiantly spitting on the body of a brāhmana had his lips cut off or a śūdra voiding urine or faeces on a brāhmana had those offending limbs cut off, or a śūdra defiantly seizing a brāhmana by the hair or the feet or beard or neck or testicles would have both his hands cut off. If several conspire and strike a person who is alone, each one was to be sentenced to twice the punishment prescribed for the offence (Yāj. II. 221, Kauṭ. III. 19, Viṣṇu Dh. S. V. 73). Kauṭ. III. 19, Manu VIII. 287, Yāj. II. 222, Br., Kāt. 787, Viṣṇu Dh. S. V. 75-76 provide that the king should make an offender pay a fine and also the expenses of medical treatment and diet till the wound is healed up and the person attacked is able to do his usual work (vide note 613 above). For mischief to property⁹⁴⁰ and for killing or maiming animals, Kauṭ., Manu, Yājñavalkya and others provide various fines. For example, Kauṭ. III. 19 prescribes that when property of small value is destroyed by a man he should be punished with fine equal to the value of the article and should be made to restore the article or its value to the owner; but in the case of articles of substantial value the fine is double of the value. Manu VIII. 288 is of similar import. Yāj. II. 223 provides varying fines if a person wrongfully causes damage to a wall by knocking it (with a club), or pierces it or divides it into two or demolishes it and makes the offender pay to the owner the cost of restoring it. Manu. VIII. 296-298, Yāj. II. 225-226 prescribe fines for causing death or injury to animals of small value (such as goats) and big animals like elephants, horses and cows. Yāj. II. 227-229, Kauṭ. III. 19, and Kāt. 793 provide fines for causing loss by injuring or felling trees, shrubs and creepers. Yāj. II. 214 holds⁹⁴² that if a person throws mud,

940. महाजनस्यैकं धनं वा अपेकं विमुणो दण्डः । अर्थशास्त्र III. 19.

941. यमापणे जलभुक्तं दद्यात्तत्परिमाणम् । तस्मात्सुरूपं मृत्युं वा दद्यादिवज्जीवन्तम् । कृताया. 792 q. by परा. मा. III. p. 423. वि. र. 284; वनस्पतीनां सर्वेषामुपभोगो यथा यथा । तथा तथा दण्डः कार्षी विज्ञायामिति धारणा । मनु VIII. 283. This last is cited as कृतायापमः in वि. र. p. 284.

942. हनिष्येर्षदमो मोहमद्वदिभिरद्वयानम् । वा. II. 214 : हनिष्येर्षदण्डः परस्त्रीपु विमुणः । तस्माद्वद्वमेतादिभिरर्षदण्डः । अर्थशास्त्र III. 19.

dust or saliva or filthy things on another or strikes with his feet, he should not be fined if he is under the influence of intoxicants at the time or is not in his right mind or does it through mistake, while Kaut. III. 19 prescribes half of the usual fine in such cases.

An important question is how far the right of private defence of person or property was recognised by the dharma-śāstra works. This subject has partly been dealt with in H. of Dh. vol. II. pp. 148-151 in connection with an *ātātāyin* (a desperate man) who is an incendiary or a poisoner or is armed with a weapon, is a robber, one carrying away another's wife or seizing by force (a field). Although there is great diversity of views about killing a brāhmaṇa *ātātāyin*, there is no difference of opinion as to repelling with force culminating even in death an *ātātāyin* of any other caste. Gaut. VII. 25 allows even a brāhmaṇa to arm himself when his life is in danger.⁹⁴³ Band. Dh. S. II.⁹⁴⁴ 2. 80, Manu VIII. 348-349 lay down that brāhmaṇas and vaiśyas may oppose with force when they are prevented from doing their religious duties by felons or when there are disturbances caused by invasion or the like, for saving their own lives, for preventing the seizure of their cows or other wealth or for protecting women or brāhmaṇas. The Mit.⁹⁴⁵ on Yāj. II. 286 remarks that these rules of Manu are applicable when there is no time to report to the king or when delay in opposing violence will mean loss or ruin. According to Kāt.⁹⁴⁶ (800) no blame attaches to a man who kills wicked men that are about to kill another, but when they have desisted from their attempt, they should be arrested and not killed. Aparārka (on Yāj. III. 227) remarks that persons are to be regarded as *ātātāyin* while they are about to set fire or to kill or they are in the act of setting fire or killing and the like, that where it is not possible to prevent them from doing what

943. मणसंशये बाह्यलोपि शस्त्रमादधीत । यौ. VII. 25.

944. मन्वरेण बाह्यलोपि वा यन्मांसं खापि सद्धरे । शूद्रोपातां विमतिर्ज्ञां शस्त्रं धर्मोपपेक्षया ॥ यौ. च. II. 2. 80 : शस्त्रं द्विजातिभिर्घातं धर्मो यत्रोपपद्यते । मनु VIII. 348, which the *madhvaran* (ma) explains 'धर्मोपपेक्षादिकृत्यो यत्र द्वेष्टे काले वा भेदमतेदनादिनोपपद्यते तत्र । ... तथा द्विजातानां सद्धरे योद्धतानिमित्तकं पुद्गे । स्त्रीविभान्युपपत्तौ पुण्यद्विस्तानि-कारणे धर्मद्विस्तोर्नन्द न दुहयति ।'

945. यदा तु राज्ञो निवेदनेन कालविलम्बनेन कार्यातिपाताशङ्का तदा स्वयमेव जायादी-
न्हन्वाद् । शस्त्रं द्विजातिभिर्घातं धर्मो यत्रोपपद्यते । इति । मिता. on यौ. II. 286.

946. उद्यमानां तु पापानां तन्मुद्वीषो न विद्यते । निवृत्तास्तु यदारम्भादुद्धरणं न वक्षः
स्मृतः ॥ कारवा. 300 q. by स्थुतिच. II, p. 315.

they intend to do except by killing them there only the texts allow killing; but that where it is possible to prevent them by merely wounding them with a weapon or stick, killing them would be an offence.⁹⁴⁷ Medhatithi^{947a} on Manu VIII. 348 differs from this and allows the killing of a desperado even after he has carried out his purpose and not only when he is about to carry it out or is in the act of carrying it out. The view of the Mit. on Yāj. II. 21 is that one has a right to oppose and kill another in self-defence, in defence of women and other weak people, who cannot defend themselves against a murderous or violent attack and that even if a wrongdoer of the brāhmaṇa caste was killed in the exercise of such right there is no punishment at the hands of the king and the *prāyaścitta* (for killing a brāhmaṇa) is a light one. Similarly a man can kill with impunity animals having claws, horns or fangs or horses or elephants if they attack a person (Kāt. 805 q. by Sm. C. II. p. 316).

947. अथ च कर्तमाद्यिदानीदित्यापार एवततापिन उच्यन्ते । तदुपापारनिवारणे च पच बधमन्तरेण न सम्भवति तथैव तदुपापारज्ञा । पच तु दुष्टदशाद्यादिप्रहारमाधेनेव दायमी निवारयितुं तत्र तु तदुपापे दोषनिमित्तमेव । अत एवोक्तं ब्रह्मरपतिना-आकुष्टस्तु समाकोश-स्ताहितः प्रतिताडयन्-दुष्टादि । अपराक्तं p. 1043. For the right of private defence of person and property compare the above dicta with sections 99 to 105 of the Indian Penal Code.

947a. आपातमिति वचनादुपलक्षणो हन्तुमभिधानं दारान् वा त्रिहीर्षेण हन्तव्यः कुते तु दोषे किमप्यकरिष्यतीत्युपेक्षा इति ब्रूते तदुक्तं यतः प्रकाशमगकाशं चेति वक्ष्ये । समानौ द्यौतं करिष्यन् कुतश्च लुष्ट (? दुष्ट) श्वेदिति । तस्मादापातमित्यनुवादः कर्तुमागतं कृत्वा वागतमिति । आततायित्वाचामो हन्ति न च कुतश्चन आततायित्वमुपेति (? न च कुतश्चन आततायित्वमुपेति) । मेधा. ०० मनु VIII. 348. अतश्च बाह्यणादप्य आततायिनश्च आत्मादिवाणार्थं हिंसानभिमुखिना निवार्यमाणाः समादाद्यदि निपद्येरन्तत्र लघुपापश्चितं राज-दण्डानामपश्चेति निश्चयः । मिता. on या. II. 21. The *सद्गुरु* quotes both these views and also that of *स्मृतिच.* II. p. 313.

CHAPTER XXIV

STEYA (theft).

In the Rg. there is frequent mention of *taskara*, *stena* and *tāyu*. In Rg. VI. 28. 3 the sage⁹⁴⁸ says 'may the cows not disappear from us, may a thief not injure them'. In Rg. VIII. 29. 6 it is said 'Pūsan guards the ways and knows of concealed treasures as a thief does'. From Rg. X. 4. 6 it appears that thieves were desperate and bound people with ropes and (from Rg. I. 191. 5) that thieves (*taskaras*) appeared at night. *Tāyu* (thief) occurs in Rg. I. 50. 2, IV. 38. 5, VI. 12. 5 and is an Indo-Iranian word. The word 'stena' occurs in Rg. VI. 28. 7 and means 'one who is a cattle-lifter'. Rg. VIII. 67. 14 indicates that a *stena* was bound with ropes (when caught). In Rg. VII. 55. 3 the dog is asked to run after a *stena* and a *taskara*, the first being probably a thief (who secretly carries away property) and the second a thief who openly carries it away. In the Vaj. ^{949a} S. XI. 79 (= Tai. S. IV. 1. 10. 2) we have the *malintu* in addition to *stena* and *taskara*. Atharvaveda IV. 3 contains charms against wolves, tigers and thieves (*taskaras*).

Steja is distinguished from *sāhasa* in Manu VIII. 332, Kaut. III. 17, Nār. XVII. 12 and other works as stated under *sāhasa* below. Kat. 810 defines ^{949b} it as 'depriving a man of his wealth either clandestinely or openly and either by night or by day'. Nār. XVII. 17 defines it as 'deprivation of wealth by various means from people that are asleep, careless or intoxicated'. It may be of three kinds according to the value of the thing stolen viz. trifling (when earthen-ware, seats, cots, wood, hides, grass, beans in pods or cooked food is stolen) or middling (when the theft relates to clothes except silken

948. न वा नशन्ति न दुभानि तस्करो वासाभामिक्षो व्यधिरा दुधर्षति । अ. VI. 28. 3; पथ एकः पीपाथ तस्करो यथै एष वेदु निधीनाम् ॥ अ. VIII. 29. 6; तनूयप्रेष तस्करो वनसु रजनाभिर्दुशभिरव्यपीताम् । अ. X. 4. 6 (explained in निदृक् III. 14).

949a. ये जनेषु मतिम्लयः स्तेनास्तस्करो वने । ये कक्षेष्वापयस्त्रांस्ते दुभानि जग्मवो ॥ वाज. सं. XI. 79. The com. on Tai. S. explains: 'स्तेनाः गृहचोराः तस्करोः मकचोराः अतिमकटा निर्भवा ग्रामेषु बन्धिकाः मतिम्लयः'.

949b. यच्छर्ष वा यक्षाश्च वा निशानामधवा दिवा । यत्परद्वयहरणे स्तेवं तापस्कीर्तितम् ॥ कात्या. 810 q. by दाशमान VI. 9, p. 224.

ones, animals except cows and bulls, metals except gold, rice and barley), grave or high (when gold, jewels, silken cloth, women, men, cattle, elephants, horses and the wealth of brāhmanas or temples is stolen). Vide Nār. XVII. 13-16 and Yāj. II. 275. Thieves are either *prakāśa* (open or patent) or *aprakāśa* (secret) acc. to Manu IX. 256, Br. ⁹⁴⁹ (S. B. E. 33 p. 359 v. 2). Acc. to Manu IX. 258-260, Nār. (pariśista 2-3) and Br. (S. B. E. 33 p. 360 verses 3-4) patent thieves are traders who employ false weights and balances, gamblers, quacks, bribers of *sabhyas*, prostitutes, those who profess to arbitrate, those who manufacture imitation articles, those who subsist by prognosticating good fortune or portents or by magic or palmistry, false witnesses &c. Manu (IX. 261-266) states that in order to find out such thieves the king should employ spies in various disguises at various places such as meeting halls, refreshment rooms, brothels, wineshops, theatres &c. The concealed thieves are those who move about with tools for house-breaking without being observed and whose residence is not known; they are principally ⁹⁵⁰ of nine kinds viz. one who quietly relieves a man of his money when the latter is attending to something else, a house-breaker, a highway robber (who robs travellers), a cut-purse, one who steals (or kidnaps) a woman or a man, cattle, horses and other animals. Yāj. II. 266-268 and Nār. (pariśista 9-12) indicate the various ways in which thieves may be detected and caught viz. by the (police) officers recovering a part of the booty from a man or by tracing foot-steps, or by seeking one who has been often found to be a thief, or by finding out that the man suspected cannot state his place of residence; and they recommend that on suspicion others may be caught, if on being questioned they attempt to conceal their caste or name or if they are found addicted to gambling, wine and women or if their mouth becomes dry or their voice changes or if they spend lavishly though they have no ostensible means of earning, or those who sell lost or second-hand goods or who move about in disguise or who are found making inquiries about others' houses

949. अकाशावकाशाश्च द्विविधास्तस्कराः स्मृताः । यज्ञासामर्थ्यमापातिः पवित्रास्ते सहस्रपा ॥ बृह. १. by स्मृतिच. II. p. 317, अथ. ३. p. 386.

950. उत्सृष्टकः सन्निभेता दान्यसुहृद्दण्डिभेदकः । क्षीर्गोश्वपशुस्तेष्वी क्षौरो नव-विधः स्मृतः ॥ अथ. १. by स्मृतिच. II. p. 318, अथ. ३. p. 387.

or wealth. The Mit. on Yāj.⁹⁵¹ II. 268 quotes Nār. and gives the warning that the king must carefully examine whether the man caught is really the thief and should not convict merely on suspicion, since even an innocent man may have stolen property near him or betray some of the signs noted above. When property alleged to be stolen is found with a man, it may be that the articles came to his hands from another's hand or he may have taken it up when it lay unclaimed on the ground or he may have taken it as a thief; liars often have the appearance of honest men and *vice versa* (Nār. I. 71)⁹⁵². Nārada's dictum (I. 42) that one who is not a thief may be held to be a thief as in the case of Māndavya has already been quoted above (p. 357n. 549). Vide Manu IX. 270 (= Matsya 227, 166) cited on p. 355 above. When a person is seized on suspicion of being a thief he could not be acquitted on his mere denial of the offence. He had to prove innocence by ordinary evidence (such as proof that he was elsewhere when the theft was committed) or ordeals (Yāj. II. 269). The general rule about the punishment of patent thieves was that the punishment was to be proportionate to the lightness or gravity of the crime and not to their wealth (Vyāsa)⁹⁵³. Br. (S. B. E. 33 p. 361 verses 10 ff) quoted in Par. M. III. pp. 439-440 and V. P. pp. 387-88 prescribes various punishments for particular kinds of patent thieves e. g. sabhyas giving wrong decisions (for bribes) or those who deceive by betraying the trust imposed in them are to be banished. Manu IX. 292 (= Matsya 227. 184-185) holds that the goldsmith is the worst of all deceitful persons (*kāṇṭakas*) and if he is found committing fraud his limbs should be cut off bit by bit.

As regards the concealed thieves the texts lay down special rules. Nār. XVII. 21 extends to theft of the three kinds mentioned above the same punishments that are awarded in the three kinds of *sāhasa*. Manu VIII. 323 prescribes death sentence for kidnapping men of good family and particularly women

951. अथहस्तापरिग्रहमकामादुद्धृतं भुवि। चौरिण वा परिहितं लोपयं चत्नात्परीक्षयेत्॥
कार्त्तव्यं. acc. to अपराधे p. 541, वि. र. p. 337. मित्ता. on वा. II. 268 and परा. मा. III. p. 437 ascribe it to मारदुः. The मित्ता. remarks: न हुनलिङ्गदशमनाजेण चौरिनिर्णयं कुर्यात्। अचौरपर्यापि लोपवादिचौरिर्लिङ्गसम्बन्धसम्भवात्।

952. असन्धः सत्यसंकाशः सत्याश्वाससन्निभः। दुरत्यये निविधा भाषातश्चाद्युक्तं परीक्षणम्॥ मारदु I. 71. in the शान्तिपर्व 111. 65-66 this very verse occurs with the variation that सन्ध and असन्ध are substituted for सत्य and असत्य.

953. नैममाद्या भुरिधना दण्डया दोषास्तुल्यतः। यथा ते न निवर्तन्ते तिष्ठन्ति समये तथा॥
श्यास q. by रसुतिच. II. p. 317, व. व. p. 387.

the school of the Mānavas declared that thieves caught with the stolen things on them should be at once banished but that the school of Gautama disapproved of this mode, since it is condemned because it entails loss (reduction) of people in the country. The V. R. p. 332 explains this verse as referring to a learned brāhmaṇa. Two more verses of Kat. (824-825) are quoted by V. R. p. 332 and V. C. p. 92 the first of which provides that a brāhmaṇa who is not learned whether caught with booty or not should be branded (with the appropriate signs) and deprived of all his property, provided his guilt is brought home with certainty and the second provides that a brāhmaṇa thief who is neither learned nor rich but is strongly built should be kept under guard with fetters on his feet, should be fed on meagre food and made to do hard labour for the king till his death. Gaut. XII. 46-48, Nār. (parisista 13-14), Manu IX. 271 and 278, Kat. (827) hold that the punishment for those who knowingly give food, fire (when they feel cold), water or asylum to thieves or who receive or purchase stolen property or who conceal them are to be punished like the thieves themselves.⁹³⁷ Yāj. II. 276 prescribes the highest amercement for any one who knowingly gives help to a thief or murderer in the above ways or by directions or by supplying tools or money wherewith to go to a place for committing the offence.

In certain cases a person could take without being liable to be punished as a thief certain things belonging to another even if he had not the latter's permission. Gaut. XII.⁹³⁸ 25, Manu VIII. 339 (= Matsya 227. 112-113), Yāj. II. 166 allow a person of the three higher castes to take grass, fuel-sticks, flowers of trees and plants for feeding cows and for the worship of fire from any place as if they belonged to himself and also fruits of trees that were not enclosed. In such cases he would not be liable to a fine nor does he incur sin (Kullūka on Manu VIII. 339). A smṛti passage stating that if a man takes

937. Compare sec. 212 (about harbouring an offender) and 411 (on receiving stolen property) of the I. P. C.

938. मोक्षमर्थं वृणमेधार्थं वृद्धनृपतीनां च पुण्यानि स्वयदादवीत कलानि चापरिवृत्तानाम्. शौ. XII. 25. अपरार्क p. 773 remarks that this is so only when there is difficulty in getting these (आपदि.) दयुनककम्-तुणं वा यदि वा काष्ठं पुष्पं वा यदि वा फलम्. अनापृच्छानि वृद्धानो हस्तच्छेदनमर्थं। इति-महं द्विजस्यतिरिक्तविषयमनाप-द्विषये वा मवादिपतिरिक्तविषये वेति। मिता. on वा. II. 166; अपरार्क p. 774 says तद्वनापवृत्तशुद्धादिविषयम्'.

grass or fuel or flowers or fruits without permission deserves to have his hand cut off is explained by the Mī. (on Yāj. 166), Aparārka p. 774 and others as meant to apply to persons other than *dujas* or as meant to refer to a case where they are taken by a person who has really no difficulty in securing these or where these are not taken for the use of cows or for worship. This matter had been a subject of discussion from ancient times. Ap. Dh. S.⁹³⁹ (I. 10. 28. 1-5) contains a discussion from which it appears that Kautsa, Hārta, Kāṇva and Puṣkarasādi were of the opinion that whatever (however trifling or in whatever circumstances) a man took without the consent of the owner, he became a thief; that Vāṛṣyāyana held that there were exceptions to this rule viz. that owners should not forbid the taking (of a small quantity of) grain in pods (such as *mudga* or *mūṣa*) or grass for bulls yoked to carts, but that if large quantities even of these were taken there would be theft. Śānti 165. 11-13, Manu XI. 16-18 and Yāj. III. 43 state that when a brāhmaṇa or other person has fasted for three days because he has had no grain with him, he may on the 4th day take grain for one day's meal from anywhere he can get, whether from a threshing floor or from a field or a house, and that if the owner questioned he should declare to him the reason, but a person of a lower caste should not in this way take grain belonging to one of a higher caste, unless the latter pursues a sinful course or does not perform the duties of his caste. Vyāsa quoted by Sm. C. I. p. 175 allows a man to commit even theft, when he is in distress for food, first from a person of a lower caste, then from one of the same caste and then from one of a higher caste. Manu VIII. 341 (= Matsya 227. 110, 114), Nār. (prakṛpaka 39), Śāṅkha and Kā. (822A) state that a traveller whose food has run out may take from another's land without being liable to punishment two sugarcane stalks, two *mūlakas* (esculent roots), two cucumbers or melons, five mangoes or pomegranate fruit

939. यथा कथा च परपरिग्रहमभिमन्यते स्तेनो ह भवतीति कौत्सहारौ तथा काण्व-
पुष्करसादी । सम्पपपादाः परपरिग्रहेष्विति वाच्यार्थणि । ग्रम्योपा युग्मवासी न स्वामिनः
पतिषेधयन्ति । अतिग्रहहारो वृद्धो भवति । सर्वेषां लुभति पूर्वमिति हारितः । अप. ध. सू. I. 10.
28. 1-5.

960. आपलु विहिते स्तेन्यं विशिष्टसमर्हानतः । हीनाद्वादेयमादौ स्वात्समाद्वा तदनन्तरम् ।
स्वामि य. by स्मृतिच. I. p. 175 ; शान्तिपर्व 141, 395 आपलु विशिष्टं च महीपसः ।
विषेण वाजस्तार्थं कर्तव्यमिति विश्वः ।

and a handful of dates and of such corn as rice, wheat, gram &c.⁹⁶¹

Sāhasa (crimes of violence). Manu VIII 332, Kaut. III 17, Nār. XVII 1, Yāj. II 230, Kat. (795-796) define *sāhasa*⁹⁶² as any act which is done with violence in defiance of or in spite of the presence of royal officers or guards or people. The word *sāhasa* is a derivative from 'sahas' meaning 'force' (Nār. XVII 1). Sometimes it is distinguished from theft (as in Manu VIII 332, Kaut. III 17 and Nār. XVII 12) by saying that theft consists in depriving a person of his wealth stealthily (without force), while in *sāhasa* there is the use of force or violence⁹⁶³. Nār. XVII 2 and Br. (S. B. E. vol. 33 p. 359 verse 1) state that *sāhasa*⁹⁶⁴ is of four kinds viz. manslaughter, theft, violence to the wives of others, and the two kinds of *pārasya* (treated as one-head). Although these topics can be comprehended under *sāhasa*, they are generally dealt with separately in the smṛtis and digests as a matter of convenience and in order to provide heavier punishment for crimes of violence⁹⁶⁵, since a man guilty of a crime of violence is a worse sinner than one guilty of abuse, theft or assault (Manu VIII 345 and Mit. on Yāj. II 230) and Manu VIII 244 enjoins upon the king not to tolerate for a moment a man guilty of violence. The

961. तिलमुद्रमाषपयोधुमादीनां सरपमुद्रिग्रहणे तु न दोषः अधिकानाम् । अङ्गु. q. by स्मृतिच. I. p. 176: यद्यपे वाक्के हे तु पञ्चासं पञ्चदाहिनम् । कर्तृवद्वारादीनां मुद्रिं पृथक् दूषयति । ब्रह्म. and कात्या. acc. to सुह. r. p. 320: चणकवीहिमोर्धुमवयानां मुद्रमाषयोः । अनिषिद्धैर्धौतयो मुद्रिरेकः पथि स्थितः । q. by मित्त. on वा. II 273.

962. स्वासाहसं त्वन्वपदत्तं यस्मिन् कर्म बल्लुतम् । निरन्वये भेदेत्वेन हत्वापव्ययने च यत् ॥ मनु. VIII 332: साहसमन्वयवत् यस्मिन्कर्म । निरन्वये स्तेपमपव्ययने च । अर्थशास्त्र III 17: सहसा कियते कर्म बल्लिखिद्वयलद्वयिते । तत्साहसमिति योक्तं सहो बलमिहोच्यते ॥ नारद XVII 1: सहसा बल्लुतं कर्म तत्साहसमुदाहृतम् । साधयस्त्वपहारो यः यस्मात् हरणं च यत् । साहसं च भवेदेवं सोपयुक्तं विनिर्गुणे ॥ कात्या. 795-796 q. by स. नि. pp. 451, 457, स्मृतिच. II, p. 316 and वि. र. p. 287 (the last two quote 796 only). स्मृतिच. II 316 explains: अन्वयो रक्षणकालक्रममातपालकमरनैरन्तर्ध, तस्मिन्मति योऽपहारः स साहसोऽपहारः.

963. तस्यैव भेदः स्तेपे स्वादिशेषस्तत्र दृश्यते । आधिः साहसमाक्रम्य स्तेपमाधि-भूत्वेन तु ॥ नारद XVII 12, व. प. p. 385 explains: आधिः पीडा धनापहरणादि-द्वारा आक्रम्य यस्मात् परस्व कियमाणः क्रोधः साहसरूपे स्तेपः । एतेन कियमाणः आधिः केवलस्तेपमिष्यति.

964. मनुष्यमारणं चौर्यं परद्वाराभिनिर्गन्म् । पाहव्यसुभवं चेति साहसं स्वाचक्षुविधम् । ब्रह्म. q. by स्मृतिच. II, p. 312, व. प. p. 392.

965. तद्विद् साहसं चौर्यं परद्वाराचक्षुषीसंग्रहणे तु स्वासक्तमपि बलद्वयैवद्व्यभ्यो-पाधौ भिद्यते इति दण्डान्तिरेकार्थं दृष्टयभिधानम् । मित्त. on वा. II 230.

V. May. (text p. 2) says that in differentiating *śaya* from *sāhasa* the maxim of 'cows' and 'bulls' is applicable⁹⁶⁶.

Sāhasa is divided by Nār. XVII. 3-6 and Br. (S. B. E. 33 p. 363 verse 24) into three varieties, viz. the lowest (destruction, abuse and trampling of fruits, roots, water, agricultural implements), middling (destruction &c. of clothes, food and drink, household utensils), highest (killing with weapons or poison, violence to others' wives and whatever causes pain to sentient beings). These three kinds are respectively punished with the three kinds of punishments described above (pp. 393-94). The principal crimes included under *sāhasa* in its narrow sense are homicide, rape and robbery. Rape will be dealt with under *śrīśaṅkrahana*. Br.⁹⁶⁷ states the general rule that one guilty of murder by violence should be punished with death and not with fines (S. B. E. 33 p. 363 v. 29). To this the brāhmaṇa offender was an exception (Manu IX. 241), who was only to be banished. Manu IX. 242 introduces another exception viz. persons other than brāhmaṇas when guilty of the great sins (specified in IX. 235) through negligence should be only deprived of all their property but if they murder a man intentionally then only are they to be sentenced to death. Manu IX. 232 and Viṣṇu Dh. S. V. 9-11 provide the punishment of death for those who fabricate false royal edicts, or who tamper with the loyalty of the elements of the State or who kill women, children and brāhmaṇas. Baud. Dh. S. I. 10. 20-21, Br. and Vyāsa prescribe⁹⁶⁸ that if a brāhmaṇa is killed by a kṣatriya, vaiśya or śūdra, the king should sentence

966. श्रीशङ्कणसाध्यास्पदपारुष्याणो साहसमेदुर्लेपो वृषहर्षिर्द्वौ गोबलीवर्द्ध-
न्यायेन । अ. मनुस. p. 2. When a man says वात-आनीकलां चर्तवद्वाक्य the separate
mention of *balivardas* (bulls) that can be included under the word
'gāvaḥ' is due to the fact that bulls, being more intractable than cows,
special attention must be paid to manage them. अथार्षे p. 1048 (on Yā).
III. 230) employs the same maxim in a similar connection 'गोबलीवर्द्धन्यायेन च
वीरवद्वयपरिहारः'.

967. साहसं पञ्चधा मोक्षं वधस्तत्राधिकः स्युतः । तत्कारिणो मर्धद्वयैः शास्त्रा वधतः
वधानतः ॥ बृह. q. by वि. वि. p. 105. The word 'vadha' has two senses, (1)
death and (2) corporal punishment. Here वध means death.

968. अविपादीनां साहस्यमये वधः सर्वस्वरूपं च तेषामिह तुल्यापहृतवधे यथावत्-
मनुष्यान्मुद्वहन् प्रकल्पयेत् । अ. ध. I. 10. 20-21; ज्ञात्वा तु पातकं सम्पन्नं समुदाहृतं स्या-
न्धनम् । सम्पादितवधोपायविशेषेन कर्तव्यः ॥ व्यास q. by स्मृतिच. II. 312 and अ. ध.
p. 394; मन्त्राज्ञापातका ये तु तथा चोपाश्रयतातकाः । ज्ञात्वा सम्पन्नं हन्ता हन्त्याः विविधै-
र्बधैः ॥ बृह. q. by स्मृतिच. p. 312 and अ. ध. p. 394. वि. वि. p. 105 reads राज्ञा
सम्पन्नं हिंसा हन्तव्या; and explains 'सम्पन्नः सकृच्छिरश्चेद्, विविधो वधः अदृशा-
स्तिपूर्विका मन्त्राज्ञास्ति'.

the offender to death in various ways and confiscate all his property, but if a man kills another of his own caste or of a lower caste than the king may punish the offender with some punishment appropriate to the crime and the strength of the offender. In IV. 11 Kaut. provides sentences of death in various ways for murder following ancient śāstras, but remarks that if murderers have not been guilty of cruelty they should simply be sentenced to death without torture or the like⁹⁶⁹. One special rule deserves notice. Gaut. 22. 12, Āp. Dh. S. I. 9. 24 6-9, Manu XI 87, Vaa 20. 34, Yāj. III. 251 prescribe the same *prāyaścitta* for murdering a brāhmaṇa woman who is an *ātreya* as for one who kills a brāhmaṇa male. The different meanings of 'ātreya' given from ancient times are noted below⁹⁷⁰. Texts

969. एते शास्त्रव्यवृत्ताः क्रुशद्व्या महात्मनाम् । अक्रिहतां तु पापानां धर्मः शुद्धयाम्
स्मृतः ॥ अर्थशास्त्र IV: 11, last verse.

970. आत्रेयार्थेभ्यः । गौ. 22. 12; आत्रेयी च स्त्रियम् । आप. व. ध. I. 9. 24. 9. *आत्रेयी* is variously explained. The word occurs as early as the Sat. Br. I. 4. 5, 13 where in explaining why the offerings to Prajāpati are made in a low tone a legend about the goddess 'Vāc' is narrated and it is said that in having sexual intercourse with an *ātreya*, a man incurs sin' (तस्मादत्रात्रेया पोषितैस्त्री). Here the word appears to mean a woman who is in her monthly illness. Vaa. (20. 35-36) defines *ātreya* as a woman who has taken the purificatory bath on the 4th day after her monthly illness begins and derives the word from अत्र 'आत्रेयीं वक्षामो रजस्वलादुत्सनातामात्रेयीमाहुः । अत्र सोमद्वयत्वे भवतीति । Vasiṣṭha either cites or summarises a Vedic passage (as stated by Viśvarūpa) which means 'here (i. e. in the womb of this woman) a child is to come'. In SBE vol. 14 p. 107 the same is translated as 'if the husband approaches her at that (time) he will have offspring'. But this is not correct. 'Esyat' qualifies 'apatyam' and is not in the masculine. Vaa. derives the word from अत्र and the root ऋ. Viṣṇu Dh. S. 36.1 and 50.9 appear to hold that *ātreya* means a woman of the Atri-gotra. Haradatta on both Gaut. and Āp. explains *ātreya* as Vasiṣṭha does and states that others interpreted it as 'अत्रियोवा'; on Yāj. III. 251 (तस्मात्रेयीनिवृत्तः) विष्णुश्रुति explains *आत्रेयी* as a woman within 16 days from the beginning of the monthly illness and quotes वसिष्ठ 20.36 and also says 'आत्रेयी अत्रियोवा वर्णपत्नि । तदपि युक्तमेव । तथा चाग्नायाः ततोविः सम्बद्धेऽपुष्कला तस्मादत्रात्रेया पोषितैस्त्रिनामाहुः । ततोमे सम्बन्धकारुणात् एतः ।'. From Sabara on Jai. VI. 1. 7 it appears that some derived the word as 'अत्र कुशवस्या विद्यत इरपात्रेयी', while Sabara himself preferred the meaning 'अत्रियोवा' and regarded the prohibition to kill an *ātreya* as simply meant for praising that gotra 'तथा गोत्रप्रशंसार्थं आत्रेया अवयमद्विर्तनम् । न चापञ्चसत्ता आत्रेयी । गोत्रं श्रितम् । न हि अत्रात्रादयं तद्विद उपपन्नः । समर्थानां हि तद्विद उपपद्यते । न च अत्रात्रादयं सामर्थ्यमस्ति' (on Jai. VI. 1. 9). Sam quoted by परा. मा. II 1 p. 103 gives two meanings 'जग्मदभुति संस्कारे संकृता अष्टाचर्या । यमिनी वाय वा वा स्वात्तामात्रेयी विनिर्दिष्ट ॥'. The अमरकोश gives *आत्रेयी* as a synonym of रजस्वला.

like Āp. I. 9. 24. 1-5, Gaut. XXII prescribe different *prāyaścittas* for murder depending upon the castes and sexes of the murderer and the murdered. These will be briefly dealt with under *prāyaścitta* later on. In certain cases acc. to Manu VIII. 291-292, Yāj. II. 298-299, Kaut. IV. 13, though death or injury to persons or loss of property results, no punishment was prescribed viz. when the nose-string of bulls yoked to a cart snaps, when the yoke breaks, when the cart swerves on one side owing to the unevenness of the ground, when the axle or wheel breaks or when the leather thongs with which the several parts of the cart are tied give way, or when the rope cast round the necks of bulls or the reins break or when in spite of the driver loudly calling upon a person to move aside from the way an accident occurs. But Manu VIII. 293, 294 (= Matsya 227. 95-96) provide that where through the want of skill of the driver knowingly engaged by a master the cart is overturned and injury is caused, the master should be fined 200 *panas*, but if the driver employed be known to be skilful, then when injury is caused the driver should be fined (and not the employer). Further if the driver, though seeing that the road is blocked by cattle or other carts, rashly drives and kills men and animals he should be punished (Manu VIII. 295). It is stated by Nār. (*pārusya* 32, S. B. E. vol. 33 p. 212) that the father is not liable for his son's offence, nor is the owner of a horse, dog or ape liable to punishment (for injury caused by any of these) provided they are not set up (to do harm) by the owner. If a driver kills a man by rash or negligent driving he is to be punished like a thief; if he kills any one of the larger animals (such as a cow, a horse, a camel or elephant) the punishment would be half of the preceding; if he kills one of the inferior animals, the fine would be two hundred. Kaut. III. 19, Manu (VIII. 285), Yāj. II. 227-229 and Viṣṇu Dh. S. V. 55-59 prescribe graduated fines for the destruction of trees, plants and branches, flowers and fruits according to their usefulness and sanctity. The *smṛtis* made a distinction as regards punishments between crimes of violence and crimes due to negligence or mistake. For example, Manu VIII. 284 (= Matsya 227. 30) prescribes a fine of 500 *panas* for depriving a man of his house, garden or field by threats of violence, but only prescribes a fine of two hundred if a man deprives another of his house &c. by mistake.

Various rules were laid down about inciters or abettors. Yaj. II. 231 and Kaut.⁹⁷¹ III. 17 prescribe for the man who incites another to crimes of violence double the punishment to be inflicted on the perpetrator himself and four times for one who incites another by assuring him 'I shall give as much money as will be required'. Kat. (798) and Br.⁹⁷² (S. B. E. 33 p. 363 vers 31) prescribe that if several violently beat a man to death, he who gives the fatal blow on a vital part is declared to be the murderer and is to suffer the full punishment for murder. Kat. (832-834)⁹⁷³ and Br. (S. B. E. 33 p. 364 verse 32) provide that he who commences a crime of violence, who is a helper, who gives advice as to the way (in which *sāhasa* is to be carried out), who gives refuge (asylum) to the offender or supplies weapons, who gives food to wrongdoers, who incites (offenders) to put up a fight, who shows how the person (killed) is to be destroyed, who connives (at the commission of an offence), who exposes the faults (of the person killed), who gives his approval (to the offence), who though able does not forbid or prevent the commission of the offence—all these are (practically) perpetrators of the crime and the king should award punishment according to their ability and their guilt. Vide also Āp. Dh. S. II. 11. 29. 1.⁹⁷⁴ For those who begin an offence or abet its commission Br. (S. B. E. 33 p. 364 verse 32) prescribes half the punishment prescribed for the wrongdoer.⁹⁷⁵ Yaj. (II. 232-242) enumerates several kinds of offences as allied to *sāhasa* and prescribes punishments therefor, such as breaking a house that is closed under seal, causing harm to neighbours and *kulikas*

971. यः साहसं प्रविप्रेतति कारयति स द्विगुणं दद्यात् । वायद्विरूपमृपयोवपते तावद् दास्यामीति स चतुर्गुणं दण्यं दद्यात् । अर्थशास्त्र III. 17.

972. एकस्य बहवो यत्र मारयन्ति दण्यङ्किताः । मर्मग्रहणको वस्तु पातकः स उदाहृतः ॥ बृह. प. by वि. र. p. 373, अथ. प. p. 395 ; मर्मपती तु पलेषां यथोक्तं दापयेद्दणम् । बृह. प. by स्मृतिच. II. p. 312, वि. र. p. 373.

973. आरम्भकृतसहायश्च तथा मार्गद्वेशकः । आश्रयः शस्त्रदाता च मत्तदाता विकर्मिणाम् ॥ दुष्टोपदेशकश्चैव तद्विनाशप्रदोक्तः । उपेक्षाकारकश्चैव दोषवत्तातुमोदकः । अग्निषेद्धा क्षमो यः स्वात्मैवेते कार्यकारिणः । पञ्चाशकपुत्रस्य तु दण्डमेवा प्रकाशयेत् । कात्या. प. by स्मृतिच. II. p. 312, परा. मा. III. p. 455, वि. र. p. 375, अथ. प. p. 395. There are slight differences in readings.

974. प्रयोजयिता मन्त्रा कर्तेति स्वर्गनरकफलेषु कर्मसु भागिनः । आथ. ध. सू. II. 11, 29, 1.

975. आरम्भकृतसहायश्च दोषमतीतदर्पितः ॥ बृह. प. by परा. मा. III. p. 455, वि. र. p. 374, अथ. प. p. 395. Compare sections 119 and 120 of the I. P. C. for lesser sentences in the case of abettors.

(one's agnates), abandoning one's parents or sons or brothers or sisters even though they be not *pitṛa*, sexual intercourse with a widow, (intentional) defilement of the higher castes by *candālas*, making counter-felt coins or false weights and measures, giving quack medicines to royal officers or other men. These are all passed over here.

CHAPTER XXV

STRISANGRAHANA (Adultery or unlawful intercourse with a woman).

The Mit. (on Yaj. II. ⁹⁷⁶ 283) states that *saṅgrahana* means the unlawful coming together of a man and a woman for sexual enjoyment. Br. (S. B. E. 33 p. 365 verses 1-2) says that sinful ⁹⁷⁷ *saṅgrahana* is of three kinds, viz. brought about by force, deceit or sensual passion. The first (which is rape) occurs when intercourse is had in a secluded place against the will of a woman, or with a woman who is intoxicated or is disordered in mind or is under a mistake or when she raises a cry ; the second occurs when a woman is brought to one's house by some trick or pretence, an intoxicant (such as *Dhaturā*) is administered to her or her mind is brought under control (by chants or otherwise) and sexual intercourse takes place ; the third occurs when intercourse takes place by conveying (passion) to each other by means of the eyes (glances) or by employing a go-between and when the parties are drawn to each other by the temptation of beauty or of wealth. This last is again of three kinds acc. to Vyāsa and Br. (S. B. E. 33 p. 365-66 verses 6-8 q. by Sm. C. II. p. 8) viz. trifling, middling and grave. The first is characterised by winking at a woman, smiling at her, sending a go-between, touching her ornaments or clothes ; the second by the sending of flowers, unguents, fruits, incense, food, clothes, and indulging in private talks ; the third is characterised by lying on the same bed, dalliance, kissing and embraces. Stri-sangrahana by force (that is rape) is really included under

976. स्त्रीदुसर्पोमिदुर्गोभायः संग्रहणम् । मित्ता. on या. II. 283 ; संग्रहणं परस्मिन्ना सह दुःखवत्तु सम्बन्धः । स्मृत्युच. II. p. 8.

977. पापमूलं संग्रहणं त्रिप्रकारं निबोधत । बलीयसिद्धे द्वे तु कुलीयमनुसृत्यम् ॥ अग्नि-
च्युतया पत्निकथने मसोमसपमसया । यत्पमसया च सहसि बलात्कारकृतं तु तत् । छद्मना युह-
मामीप दृष्ट्वा वा मद्यकार्मणम् । संयोगः क्रियते यद्य सन्पथिकृते विदुः ॥ अग्निच्युतच्युतमेण
वृत्तीसंयोगेन वा । कृते क्वाप्यलोभेन ज्ञेयं तदनुसृत्यम् । बृह. V. q. by अपराकं p. 834.
स्मृत्युच. II. p. 8, अथ. २. p. 397, वि. १. p. 379, परा. मा. III. p. 462. There are
many various readings. The स्मृत्युच. explains कर्मण as कर्मणा वशीकरणम्.
Compare section 373 of the I. P. C. with the 1st kind, sec. 493 with the
2nd kind and sections 497, 498 with the 3rd kind.

sāhusa,⁹⁷⁸ as stated by the Madanaratna, the V. P. pp. 396-397 and others. The punishments for rape were very heavy. Br. (S. B. E. ⁹⁷⁹ 33 p. 366 verse 10) states that if a man commits rape on a woman of the same caste, he was to forfeit all his property, to have his penis and testicles cut out and was to be paraded on the back of an ass, that if the woman raped was of a lower caste, then half of this punishment was to be awarded and if she was of a higher caste, he was to be sentenced to death together with confiscation of all property. Kat. (830) prescribes that when⁹⁸⁰ a man has forcibly had sexual intercourse with a woman capital punishment is to be inflicted inasmuch as it is a violation of (proper) conduct. When sexual intercourse was had by deceit the man was punished with confiscation of all property, with branding on the forehead of the sign of the female private parts and banishment from the town (Br. in S. B. E. 33 p. 366 verse⁹⁸¹ 11). Here also the rule of Br. cited above (about the reduction of sentence according to the caste of the woman concerned) applies. In the case of rape and sexual intercourse by deceit the woman was not at all punished⁹⁸² but she had to undergo a penance (*prāyaścitta*) of *kṛcchra* or *parāka* for contact with a male other than her husband and till she performed the *prāyaścitta* she was to be kept well-guarded in the house, was to remain dirty (i. e.

978. तत्र बलाकारकृतं स्त्रीसंग्रहणं सादृशान्तर्यतस्तु न्ययकरणे अद्वैतैव दर्शितम् । मदनरत्नम्. Compare sec. 376 of the I. P. C. which prescribes transportation for life as the maximum punishment for rape. Vide Russell on Crimes (9th ed. 1936) vol. I. pp. 613-614 for the ancient law of England (which provided death sentence and the sentence of castration and loss of eyes) and modern law which provides penal servitude for life as the maximum.

979. सर्वसा कामपेक्षस्तु धर्मे तस्यास्मिन्नेव हरेत् । उच्छुर्य तिल्लुङ्घनी कामपेक्षमेव तु ॥ दूमो नेपः समाप्यो तु ह्रीनायामधिकस्ततः । इमः कार्योधिकार्यो तु वचने संप्रमाणम् । बृह. q. in स्मृतिच. II. p. 320, च्च. म. pp. 396-397, पद्म. मा. III. 466.

980. स्त्रीषु वृत्तोपभोगः स्यात्पक्षस्तु पुरुषो यदा । वधे तत्र प्रवर्तेत कार्यातिक्रमणं हि तत् ॥ कारपा. 830 q. by स्मृतिच. II. p. 320, च्च. म. p. 397, च्च. म. p. 244. All these three works differ as to the circumstances in which this verse applies.

981. उच्छुर्या कामपेक्षस्तु तस्य सर्वदरो दूमः । अङ्गुर्वित्ता भगाङ्गेन पुराशिक्षांसयेत्ततः ॥ बृह. q. by स्मृतिच. II. p. 320, वि. र. p. 389.

982. अनिच्छन्ती तु या मुक्ता सुतो तौ वासपेक्षये । अलिनाङ्गीमजःशर्यां पिण्डमाशो-
यजेतिगीम् । कारपेक्षिण्डलि कृच्छ्रे परार्थं वा सने गताम् । इतिवर्णोपभुक्ता वा स्वाभ्या वध्या-
धरा भवेत् । बृह. q. by स्मृतिच. II. p. 321, वि. र. 400. For कृच्छ्र and परार्थ see
सू. XI. 212 and 216. The स्मृतिच. II. p. 320 says: 'तथापितरपुत्रपसंसर्गपापं
नार्थाः सम्पद्यते । तत्त्वार्थसम्पन्नार्थता अत्रापि दृष्टव्यायामिव समाना । सा यावद्विसेन कश्चिद्व-
पेति कश्चिन्नेत्याह बृहस्पतिः । अनिच्छन्ती &c.'

not to deck herself or apply or use perfumes &c.), to lie on the ground (not on a bedstead or couch), was to receive bare maintenance. After performing *prāyaścitta* she was restored to her former position. Acc. to Yāj. II. 286 and Br. (S. B. E. 33 p. 366 verse 12), for adultery (in which there is consent) the highest fine is prescribed for the male in the case of a woman of the same caste, half of this in the case of a woman lower in caste (than the paramour), but when adultery is committed with a woman of a higher caste the male shall be put to death and the woman shall have her ears and the like cut off. Vide Shakespeare's *Othello* IV. 1, where Othello exclaims 'I see that nose of yours but not that deg I shall throw it to'. There were other sages who were humane and opposed to the punishment of disfigurement by way of the cutting of the ear or the nose. Yama⁹⁸² states that in the case of a woman guilty of adultery at her will, there was to be no punishment of death or disfigurement, but only abandonment. Kāt. (487) lays down the general rule that in all offences women should be sentenced to half the fine in money which is prescribed for a male and that when the punishment is death for a male the punishment for a woman would be cutting off a limb (vide note 626).

Nār. (XV. 73-75) holds⁹⁸³ that sexual intercourse with the step-mother, mother's sister, mother-in-law, the paternal or maternal uncle's wife, father's sister, a friend's or pupil's wife, sister, sister's friend, daughter-in-law, daughter, the wife of one's vedic teacher, a woman of the same gotra, a woman that has sought protection, with the queen or an ascetic woman (*pracrajitā*) or a wet-nurse or a virtuous wife (*sādhu*) or a woman of a higher caste is incestuous and the punishment to be prescribed for this crime is the excision of the penis and no less. Vide Manu XI. 170-71, Kaut. IV. 13,⁹⁸⁴ Yāj. III. 231-233, Matsya-

982a. स्वयच्छायां च या नारी तस्याऽप्यागो विधीयते । इति वसस्मरणम् ।... न यद्यं न च वैश्वस्ये यद्यं स्त्रीणां विधेयम् । स्त्रीणां स्थापराधे यद्यं कुर्वन् विमर्जयन्नेव तस्मात् कुर्वादिपर्यः । वैश्वस्ये कर्णनासाद्यङ्गविकर्तनं तदपि भर्त्ता न कदाचित्कार्यमित्यर्थः । न चैव स्त्रीयं कुर्वाणं चैवाङ्गविकर्तनम्-इति तेनैकोक्त्याम् । स्मृतिच. II. p. 246; vide परा. सा. III. p. 477 also.

983. माता मातृपत्न्या च भ्रूणतुलायी पितृपत्न्या । पितृपत्न्यसिद्धिरप्यस्त्री भगिनी तत्सखी स्तुषा । दुहित्याचार्यभार्या च संगोत्रा इतराण्यता । राज्ञी पत्न्यिता यात्री सार्वी तर्णोत्तमा च या । आसामन्यतमो सखा सुस्तनय उपपत्ते । शिशुमरबोक्ताने तस्य भान्तो वृण्वो विधीयते । वायु XV. 73-75. The vi. r. p. 392 remarks: माताश्च जननीत्यतिरिक्ता पितृपत्नी । दुताविषयमेतत्.

984. मातापित्रोर्भगिनी मातुलानीमाचार्याणीं स्तुषां दुहितरं भगिनीं तद्विचरतः त्रिहृच्छेदनं वधश्च । सकामा तदेव लभेत । अर्थशास्त्र IV. 13.

purāṇa 227, 139-141, which latter (three) prescribe excision of the penis and death by way of punishment (except for a brāhmaṇa) and expiation and for the woman (if she was a consenting party) death sentence. Brhad-Yama III. 7, Āp. (in verse) IX. 1 (Jivananda ed.) and Yama (Ānandāśrama) 35 prescribe that there is no expiation except that of entering fire for incest with mother, teacher's wife, sister or daughter. It is remarkable that Kaut.⁹⁸⁵ and Yāj. (II. 293) prescribe only a fine of 24 paṇas for adultery with a female ascetic, while Nār. XV. 74 and Matsya 227, 141 deem it a most heinous offence. The explanation probably lies in the fact that Kaut. and Yāj. refer to female ascetics of the lowest castes not following the orthodox religion, while Nār. refers to nuns of a higher order. Vide Manu VIII. 363 also. For forcible intercourse with a prostitute against⁹⁸⁶ her will Kaut. IV. 13 and Yāj. II. 291 prescribe a fine of 12 and 24 paṇas respectively. For unnatural offences or offences against the order of nature, Kaut. IV. 13, Yāj. II. 289, 293, Vienu Dh. S. V. 44, Nār. XV. 76 provide fines of 12, 24, 100, 500 paṇas⁹⁸⁷.

Manu IV. 134 (= Anuśāsana 104. 21 = Mārkaṇḍeya-purāṇa 34. 62-63) forbids a man to have sexual intercourse with another's wife and states that there is nothing so detrimental to long life as that. There are stray indications in the Vedic literature about sexual intercourse outside marriage. Vide H. of Dh. II pp. 637-639. In Rg. I. 92, 4 (*adhi peśūnāi vapade nṛtūra-īa*) there appears to be a reference to a dancing girl or *hetaira*. Wives hating (or proving false) to their husbands are believed to go to Hell in Rg. IV. 5. 5 (*peśiripo na janayo durevāh*). In Rg. II. 29, 1 the sage prays to the Ādityas 'remove away from me sin as a woman who gives birth to a child in secret removes it' (*ūre mātarka rahasūr-ivāgaḥ*). The gambler (in Rg. X. 34. 4) states 'others have intercourse with his wife' (*anye jāyām pari mṛśantyasya*). The word *paṇācali* occurs in Vāj. S. XXX. 22. We have already seen (H. of Dh. II pp. 576, 1098) how in the Varuṇapraghāṇa (one of the Cāturmāsya) the wife of the sacrificer had to confess if she had a lover and how even after

985. गजजितागमने चतुर्विंशतिपणो दण्डः । सकामा तदेव लभेत । अर्धशास्त्र IV. 13.

986. कृपाजीवायाः प्रसद्योपभोगे द्वादशपणो दण्डः । अर्धशास्त्र IV. 13; तथा गज-जिता यात्री वृणोक्तुसा तथैव च । इत्यमर्याध निदिष्टास्तासां तु गमने नरः । शिशिरयोक्त-तमे कृत्वा ततस्तु वधमर्हति । मत्स्य. 227, 141.

987. क्षियमगोनौ मच्छतः पूर्वं साहसदण्डः दुरुचमधिमतश्च । मैथुने द्वादशपणस्त-दगोतिवन्तस्तनः । अर्धशास्त्र IV. 13.

she confessed to having had one she was allowed to co-operate in the sacrifice on undergoing an expiation. After a man performed the solemn sacrifice called Agnicayana he was enjoined (Tā. S. V. 6. 8. 3)⁹⁸⁸ not to approach a śūdra woman and after he performed Agnicayana twice he was not to approach another's wife (H. of Dh. vol. II p. 1255).

The punishment for sangrahaṇa (rape and adultery) varied according to the caste of the man and the woman, according as the woman was married or unmarried and according as she was guarded (*guptā*) or unguarded. Vide Gaut. XII. 2, Vas. XXI. 1-5, Manu VIII. 359, Viṣṇu Dh. S. V. 41, Yāj. II. 286, 294, Nār. XV. 70 (as to higher or lower caste of offender), Gaut. XII. 3, Manu VIII. 374-378, 382-385, Kauṭ. IV. 13 (about offence against guarded or unguarded woman), Manu VIII. 364-370, Yāj. II. 285, 287, Kauṭ. IV. 12, Nār. XV. 71-72 (about maidens). Further the ancient sūtras and smṛtis prescribe more severe sentences than later smṛtis. Details of these matters are passed over here for want of space and as being now of academic interest only. But some examples may be noted. Gaut. XXIII. 14-15 and Manu VIII. 371 prescribe for an adulteress death by being devoured by dogs, but Yāj. II. 286 softened the rigour of this. Āp. Dh. S. (II. 10. 26. 20-21) prescribed the penalty of cutting the penis and testicles for the male if guilty of adultery with a married woman, but only confiscation of all property if he committed adultery with an unmarried woman. But Yāj. II. 288, Manu VIII. 366, Nār. XV. 72 went so far as to say that if a man had sexual intercourse with a maiden (of the same caste) who encouraged his advances, then there is no offence punishable by the king, but he was to bestow ornaments on her, honour her and must marry her.

It has further to be noted that Yāj. II. 290 and Nār. (XV. 79)⁹⁸⁹ make it punishable to visit a dāsl kept by a man in his own house or outside and Yāj. prescribes the fine of 50 paṇas for so doing. Vide H. of Dh. vol. II pp. 637-639 about prostitutes. But Manu VIII. 362 states that the rules making conversation with others' wives in lonely places punishable does not hold good in the case of the wives of actors, singers

988. नाद्रि चित्वा रामासुपेयाद्वोभौ रेतो पाश्यामीति न द्वितीयं चित्वापश्य चिप-
सुपेयात् तृतीयं चित्वा कां च नोपेयात् । तै. सं. V. 6. 8. 3-4.

989. आस्तेषु तु मुक्तिपातु क्षेत्रे स्थापयद्दारयत् । यस्या अपि हि नोपेया यस्तः
परपरिग्रहाः ॥ नारदः XV. 79.

and those who live on the earnings of their wives, since they themselves introduce their wives to others and make them mix among men (while they themselves remain concealed).

Śrīpundharma (duties of husband and wife). Most of the matters falling under this head have been dealt with in H. of Dh. vol. II, pp. 556-592. The liability of the husband or wife for the debts of the other has been already dealt with under *ṛṇādina*. The rights of partition, inheritance and maintenance will be discussed later on under *dāyabhāga*. Nār. XV. 1 defines this title of law as that in which the rules of the marriage of women and men and other related matters are described. Under this head Nār. speaks of the essential ceremonies of marriage, the rules about selecting a bride and a bridegroom, restrictions as to the caste of the bride, the guardians for marriage, faults or defects in a proposed bride or bridegroom, the forms of marriage, women called *punarbhū* and *śaśipī*, the practice of *niyoga*, illicit sexual intercourse, punishment of women for adultery, re-marriage, *varṇasankara*, mixed castes. In IX. 1 Manu promises that he will dilate upon the obligatory duties of man and wife, whether they are staying together or apart. Manu IX. 2 holds that the first duty of the husband and the males in his family is to keep women dependant and under their control if they become attached to a life of pleasure and Nār. XVI. 30 states that even women of good family come to ruin by independence. The next most important matter acc. to Manu IX. 5 and Br. (S. B. E. 33 p. 367 verse 2)⁹⁹⁰ is to guard women against improper attachments however trifling, since if they go astray they bring sorrow to both families (of the husband and of the father). Acc. to Hārta,⁹⁹¹ Śāṅkha-Likhita,⁹⁹² Manu (IX. 7, 9) and others the husband has to guard the wife from the approaches of other men in order to ensure the purity of the issue and by guarding her the husband guards his reputation, family, soul and his *dharma*,

990. कुमेऽप्येव पसङ्गुयो निवार्य स्त्री स्ववन्तुभिः । श्वभ्रादृभिः सुवस्त्रीभिः पालनीया विमानिष्व ॥ इव. ५. by स्मृतिच. II. p. 339, स्व. ५. p. 405, वि. र. p. 411.

991. तस्मादेवोपपाताज्जायो रक्षेत् । जायमानो कुलनाशः कुलनाशे तनुनाशः तनुनाशे देशपितृपञ्चनाशः, पञ्चनाशे धर्मेनाशः, धर्मेनाशे आश्रमनाशः, आश्रमनाशे सर्वनाशः । तस्मादेवो धर्मशीलेन सुमुक्तं धर्मा रक्षेत् । शारीत ५. by स्मृतिच. II. p. 239, वि. र. p. 410, स्व. ५. p. 405. मद्रसहस्र.

992. वैस्मिन्भावोऽर्पितः स्त्रीयामासवे तज्जलं दुर्घं जनयति यथा नीलवृषेण नीलवृष-
कस्यभवः श्वेतं श्वेतं नव जायते । एवं योनिरेव बलवती पश्चाद्व्याधः संजीयेते । श्रद्धालिखित
५. by वि. र. p. 414, स्मृतिच. II. p. 341, स्व. ५. p. 408 (at p. 405 reads तादृशं
तनुं जनयति).

since a woman gives birth to a son similar to the male with whom she consorts or on whom she sets her heart during the days after the monthly illness. Here there is some anticipation of modern Eugenics. Manu IX 10 was quite clear that women could not be completely guarded by confining them with force in seclusion, that their minds must be occupied in family work as stated by him in IX. 11 and by Br. (S. B. E. 33 p. 368⁹⁹³ verse 4), that the husband must try to deserve her regard and affection and show her honour (Manu IX. 22-24, 26, Yaj I 82). Divorce has been already dealt with in H. of Dh. vol. II pp. 619-623. Vide 'Selections from Peshwa's *daftar*' vol. 43 p. 112 where the divorce of a woman (*ghafasphota*) is ordered because the husband was really a converted Mahomedan who had been illegally admitted to caste after an incorrect method of expiation.

993. आचम्यवेधसेस्कारे स्नानोपस्कररत्नये । शीघ्रादिकार्ये संयोज्याः स्त्रीणां शुद्धिरिव
स्वता ॥ बृह. प. by व्य. प. p. 409.

CHAPTER XXVI

DYŪTASAMĀHVAYA

(Gambling and prize-fighting)

Manu IX. 223, Nār. XIX. 1 and Br. (S. B. E. 33 p. 385 verses 3) define *dyūta* (gambling) as that sport which is carried on with inanimate objects such as dice, pieces of leather, ivory and the like and in which there is a stake, while sport carried on with animate objects such as cocks, pigeons, rams, buffaloes and wrestlers is called *śamūhaya*. The attitude of Manu towards gambling was uncompromising. Manu (IX. 221-222, 224-226) calls upon the king to suppress gambling and prize-fighting in his country as they cause the destruction of the State; he states that gambling is open theft and therefore the king should endeavour to put it down and that the king should punish with corporal punishment all those who engage in gambling or who induce or help others to gamble, and that he should banish gamblers from the city because gamblers residing in the country harass wellconducted subjects by their deceitful tricks. Manu IX. 227 (= Udyogaparva 37. 19) states that in ancient times gambling engendered great enmities and therefore a wise man should not resort to it even for amusement or in jest. Kāt. (934) is to the same effect. Yāj. II. 203 and Kaut. III. 20⁷⁹⁴ allowed gambling in a central place under State supervision as it led to the detection of thieves. Br.⁷⁹⁵ (S. B. E. 33 p. 385 verse 1) refers to this divergence of views: 'Gambling that causes loss of truth, purity and wealth was forbidden by Manu, but others allowed it because it led to the detection of thieves, provided it was carried on in the presence of a master of the gambling hall and provided it yielded revenue to the king'. The person who was in charge of the

994. द्यूतमेकमुखं कार्यं तत्करज्ञानकारणम् । धातुः II. 203 ; द्यूताभ्यस्तो द्यूतमेकमुखं कारयेद्वृत्तं दीप्यते । द्वावृत्तयो द्यूताः युद्धाजीविज्ञापनार्थम् । अर्थशास्त्र III. 20; इत्थं द्यूताद्वृत्तिर्भस्माद्विधेः सर्वमुत्पादयेत् । तस्माद्राजा निवर्तेत विधेये चक्षसं हि तत् । कात्या. q. by वि. र. p. 611.

995. यत्ने निषिद्धं मनुना सत्पञ्चावधनापहम् । अभ्युत्थानसंग्रहेषु राजभाषसमन्वितम् । समिकाधिष्ठितं कार्यं तत्करज्ञानहेतुना । बृह. q. by स्मृतिच. II. p. 331, अपराकं p. 305, वि. र. 611-612.

gambling hall which gamblers made their haunt and who supplied the dice and other instruments of gambling was called *sabhika* and the stake or money agreed to be paid by the defeated gambler to the winning gambler was called *papa* or *glaha* (Yāj. II. 199). Nār. XIX. 8 provides an optional method viz. instead ⁹⁹⁶ of gambling in a hall presided over by a *sabhika*, gamblers may give the king his share in the stakes, then indulge in gambling openly and if they do so they incur no punishment. Acc. to Yāj. II. 199 as interpreted by Par. M. III. p. 574 and V. P. p. 565 the *sabhika* was to receive five per cent or $\frac{1}{20}$ th part when the stake was 100 *panas* or more and 10 per cent or $\frac{1}{10}$ th when the stake was less than 100 *panas*. Aparārka (p. 803) explains that the *sabhika* was to receive as his fee five per cent from the victorious gambler and ten per cent from the losing gambler. Nār. XIX. 2 prescribes a flat rate of ten per cent on the stake as the fee of the *sabhika*, while Kaut.⁹⁹⁷ III. 20 lays down the fee as five per cent and allows the *sabhika* to charge hire for supplying gambling accessories (such as dice, leather pieces) and for supplying water and accommodation. The *sabhika* receiving protection from the king was to pay to the king the tax agreed upon by him, was to recover from the defeated gambler the stake (by means of confinement or restraint order) and pay it over to the victor and was to be honest and forbearing⁹⁹⁸ (Yāj. II. 200, Kāt. 940, Nār. XIX. 2). Kāt. (937) states that the *sabhika*⁹⁹⁹ may give to the winner the money won out of his own pocket and may recover from the losing gambler within three fortnights or at once if there is fear of losing the money. Kāt. (935)¹⁰⁰⁰ holds that if gambling was to be allowed it must be carried on openly with an arch constructed near the door in order that respectable people might not be misled (about its real nature) and it should yield revenue to the king. If the *sabhika* is

996. अथवा कित्वा राजे द्वाभा भागं यद्योदितम् । प्रकाशं देवने कुपुरेषं दोषो न विद्यते ॥ नारदं XIX. 8.

997. जितद्वाराद्वयं यः पञ्चकं शतमाददीतः काकाज्यसारताशलाकाकज्यमुदकायामि-
हमेकस्य च । अपरार्क III. 20.

998. पञ्चकं द्वापमेहेयं तस्मिन्स्थाने न स्यात्पथा । जितं वै सभिकस्तत्र सभिकमपथा
किंवा ॥ कात्या. 940 q. by अपरार्क p. 804, वि. र. p. 615.

999. जेतुर्द्वारात्पथं द्वयं जितम् द्वाभं विपक्षकम् । सद्यो वा सभिकेनैव कित्वाद्भन-
संशये ॥ कात्या. 937 q. by अपरार्क p. 803, वरा. मा. III. 575, वि. र. 612.

1000. नोति चेत् प्रकाशं तु द्वारावस्थितोरणम् । असंमोहाधर्मार्थोऽपि कारयेत्त्वरूपम् ॥
कात्या. 935 q. by वि. र. p. 611.

unable to make the defeated gambler pay the stake to the victor, the king would make the former pay to the latter provided the gambling was done openly in the presence of the *sabhika* and a group of gamblers and the king's dues were paid by the *sabhika*, but not otherwise (Yāj. II. 201). Nār. XIX. 6-7 and Yāj. II. 202 provide that when gambling is carried on secretly and without the king's permission or with false dice or other deceitful tricks, the gamblers and the *sabhika* would not be able to gain their object (i.e. recovering bets won or the fee) and would be liable to punishment, viz. branding on the head (with dog's foot and the like) and banishment. Nār. XIX. 6 adds that the banished gamblers would have wreaths of dice tied round their necks. Kāt. (941) and Br. (S. B. E. 33 p. 386 verse 7) state that a person ignorant of gambling should, if defeated in gambling in private, be released from his liability, but one who is an adept in gambling should not be relieved when defeated; but even an adept in gambling if he has lost the whole of his wealth as a stake should not be made to pay the whole.¹⁰⁰¹ In disputes among gamblers, in deciding on victory or in the matter of gain to the winner, and as regards the question of false dice the keeper of the gaming house, if honest, is the final authority¹⁰⁰² (Kāt. 942). Nār. XIX. 4, Yāj. II. 202, Br. (S. B. E. 33 p. 386 verse 6), Kāt. (943) provide that when there is a dispute as to success or defeat the king should appoint gamblers to decide the dispute and gamblers will also be the witnesses in such a dispute (in spite of the rule stated above on p. 335 that gamblers are not competent witnesses), but if the gamblers are alleged to be inimical to the disputants the king may then¹⁰⁰³ himself decide the matter. Yāj. II. 203 extends all the rules about gambling to *gamāhvaṃsa*. Br. (S. B. E. 33 p. 386 verse 4) notes that the stake is to be paid by the owner of the animal that is defeated.¹⁰⁰⁴ The S. V. (p. 487) quotes a text of Viṣṇu and a (Bhāruṇi's?) gloss

1001. अमभिज्ञो जितो मोच्योऽमोच्योऽभिज्ञो जितो ह्यः। सर्वेष्वपि जितेऽभिज्ञे न सर्वस्य मुद्रापयेत्। कारणः। खो जितोऽमभिज्ञश्च कुडाक्षो कपटेन वा। मोच्योऽभिज्ञोऽपि सर्वस्य जितं सर्वं न दास्यते ॥ बृह. ॥ both q. by अपराक्ष p. 804 and वि. र. p. 616. दीपकटिका on या. II, 200 cites खो जितो etc.

1002. विप्रश्नेऽथ जपे तामे करणे कृत्स्नेविनाम्। यमाणं सभिकस्तत्र शुचिश्च सभिको यदि ॥ कारणः. 942 q. by अपराक्ष p. 804, वि. र. p. 617.

1003. उमपोरपि सन्दिग्धौ कितवाः स्तुः परीक्षकाः। पदा विद्वेषिणस्ते तु तदा राजा विचारयेत् ॥ बृह. q. by अपराक्ष p. 804, परा. मा. III. p. 576, वि. र. p. 618.

1004. इन्द्रश्चेन वा कश्चिद्वत्साद्वन्वाप्युवात्। तस्यामिना पत्नी देवः यस्तत्र परि-
कल्पितः ॥ बृह. q. by वि. र. p. 614, स. वि. p. 486.

thereon that the king gets one-fourth of the stake from each of the owners of the fighting animals and that the animal that is defeated (except a wrestler or a buffalo) is to be made over, whether living or dead, to the owner of the winner. The *Mānasollāsa* (vol. III, p. 229) contains an elaborate description of a king's amusements by way of wrestling matches, cock-fights &c. The *Daśakumāracarita* makes frequent reference to gambling. In *Uucchvāsa* II. (p. 47) we are told that there are 25 *kalās* on which gambling depends, that legal proceedings between gamblers were decided by reliance on the *sabdhika* and that out of a stake of 16000 *dināras*, the successful gambler took half and distributed the other half among the *sabdhika* and the denizens of the gambling hall.

Gambling is one of the most ancient vices. Rg. X. 34 is a hymn which contains the lament of a gambler. Elsewhere also in the Rg. gambling is referred to. Vide Rg. I. 41. 9 (explained in *Nirukta* III. 16), VII. 86. 6 (where it is said that dice made of *Vibhīdaka* tree are one of the sources of sin), Rg. X. 42. 9, X. 43. 5. In the *Atharvaveda* also dice and *glāhu* occur frequently. Vide *Atharva* IV. 16. 5, IV. 38 (a hymn for good luck in gambling). In *Vaj. S.* 30. 18 we have the words 'aksarājaya kitavam'. In certain solemn sacrifices like the *Rājasūya* dice play was an important item. Vide H. of Dh. vol. II, p. 1219. Pāṇini teaches the formation of many words relating to gambling. In II.¹⁰⁰⁵ 1, 10 he teaches the formation of *Aṅgavyūha* compounds like 'aksapari' or 'śulākāpari' in the sense 'that loss was caused by one dice being cast in a way different from the way in which it was cast in a prior game'. In IV. 4. 2 he teaches that 'aksika' means one who uses dice in gambling or wins by using¹⁰⁰⁶ dice and in IV. 4. 19 he states that 'aksadyūtika'¹⁰⁰⁷ means '(enmity) brought about by using dice in gambling'. Vide also Pāṇ. II. 3. 57-58. Āp. Dh. S. II.¹⁰⁰⁸ 10. 25, 12-13 prescribe that in the

1005. अक्षजलाकारं कथाः परिणा । पाणिनि II. 1. 10, on which the महाभाष्य quotes a कारिका 'अक्षद्वयस्तृतीयान्ताः पूर्वोक्तस्य यथा न तत् । कितव्यवहारे च एकत्रैऽक्ष-जलाकारयोः ॥'

1006. तेन दीप्यति जयति जितम् । पाणिनि IV. 4. 2; अक्षदीप्यति जयति वा आशिकः ।

1007. निर्द्वेषेऽक्षयुताविभ्यः । पाणिनि IV. 4. 19; अक्षयुतेन निर्द्वेषमाक्षयुतिर्भवति ।

1008. समाया मध्येऽपि द्वेषमद्वेष्यावोत्पन्नानि द्वेषाद्वेष्यमात्मैर्भातकान् यथापान् । अर्थाः शुचयः सरपशीला वीचितारः स्तुः । आप. ध. सू. II. 10. 25, 12-13.

midst of the sabhā (hall) having raised a table for playing dice one should place thereon dice even in number and made from the vibhītaka wood and that players should be men of the three higher castes, pure and devoted to truth. In the Mahābhārata Yudhisthira¹⁰⁰⁹ is made to say that it was his vow not to refuse dice play when he was challenged to it. It was well-known that gambling affects the minds even of the good, while in the case of those who were not ordinarily good it led to dissensions and calamities. Many modern people justify the action of Yudhisthira on the ground that the code of ksatriya chivalry and morality of those ancient days required that he should not be afraid to play with dice when challenged by an adversary. Conceding for the sake of argument that indulgence in gambling even on the part of such a virtuous, noble and philosophic warrior as Yudhisthira was justified or at least excusable, there is nothing to show that the code of ksatriya chivalry permitted him to gamble away his own spirited, devoted and virtuous queen and his four valiant brothers. It appears that the real aim of the great author of the Mahābhārata is to emphasize that gambling is such a reprehensible pastime and so ruinous and degrading that even the greatest and the best, when once they indulge in it, lose all sense of duty, morality and of the claims of love and affection. It has already been seen how gambling was looked upon as a great vice in the king by writers on politics and also on dharmasāstra. Even the Purāṇas here and there condemn gambling. For example, the Brahmapurāṇa (171. 29-38) condemns it in strong language. It says that the gambler's wife is always in distress and the gambler on seeing the condition of his wife is also worried (this is in almost the same words as Rg. X. 34. 10-11), that the Veda condemns gambling and that there is no sin comparable to gambling.

1009. अहोरात्रं न निवर्त्तन् कदाचिन्नद्यातिर्तं ज्ञात्वा नैव खलु मे ॥ समापर्व 58. 16: अहोरात्रं महापादा सतां मतिविनाशनम् । असती तत्र जायते भिक्षाश्च स्वसनानि च ॥ उद्योग 128. 6.

CHAPTER XXVII

DĀYABHĀGA

(Partition of wealth)

The word *dāya* has been used even in the oldest period of the Vedic Literature. Rg. II. 32. 4 (*dadātu vīram itadāyam-ukthyaṃ*) has already been quoted above (on p. 388). In Rg. X. 114. 10 (*śramanya dāyam vibhajantyebhyah*) the meaning of the word seems to be 'a share' or 'reward'. In the Tai. S. and the Brāhmanas the word *dāya* appears to be employed in the sense of 'paternal wealth' or simply 'wealth'. In the story of Nābhānediṣṭha¹⁰¹⁰ it is stated that Manu divided his *dāya* among (for) his sons' (Tai. S. III. 1. 9. 4). That 'dāya' here stands for 'dhana' follows from another passage of the Tai. S. (II. 5. 2. 7) 'Therefore they distinguish (or establish) the eldest son by wealth'. In the Tāndya Brāhmaṇa¹⁰¹¹ 16. 4. 3-5 also it is said 'Therefore whoever among (a man's) sons secures the best or major portion of wealth as *dāya*, him they regard as the son who would be the lord of all'. Another word viz. *riktha* occurring in the sūtra and smṛti literature is also employed in the Rgveda¹⁰¹² III. 31. 2 'the son of the body does not give to his sister the ancestral wealth, but makes her the receptacle for the son of her husband'. The word *dāyāda* (meaning a co-sharer, one who takes a share) occurs frequently in the Vedic Literature. In the Tai. S. VI. 5. 8. 2¹⁰¹³ it is said 'Therefore women being destitute of strength take no portion (of Soma)

1010. मनुः पुत्रेभ्यो दायं विभजत् । तै. सं. III. 1. 9. 4; तस्मान्नयेदं दुर्धं धनेन निरपचायवन्ति । तै. सं. II. 5. 2. 7. आप. ध. दृ. (II. 6. 14. 11-12) quotes both these texts when combating the view that the eldest son gets the entire ancestral wealth. For the story of Nābhānediṣṭha with slight variation, vide Ait. Br. 22. 9, which is an attempt to explain the obscure hymns Rg. X. 61-62.

1011. तस्माद्यः पुत्राणां दायं धनतममिवोपैति तं मग्धते धमेवेदं भविष्यतीति । ताण्ड्य 16. 4. 3-4.

1012. न जामये तान्यो रिक्थमरिक्कुञ्जकार धमे सनितुर्निधानम् । ऋ. III. 31. 2. This is explained in the Nir. (III. 6) as 'न जामये भगिन्वै ... तान्यः आरमजः पुत्रः रिक्थे पारिषत् मादात् । अकार एतां वर्धनिधानी सनितुर्लक्षणादस्य'.

1013. तस्मान्निषीधो निरिन्धिषा अदायादिरपि पापादुस उपस्तितरं वदन्ति । तै. सं. VI. 5. 8. 2. दायदा is derived as दावमादुने (from दा with अ).

and speak more weakly than even a wretched (low) man'. In the Atharvaveda V. 18.6 Soma is said¹⁰¹⁴ to be the *dāyāda* of the brahmanas. Visvāmītra invites Sunahṣepa to share in the spiritual wealth (*dāya*) belonging to him (Ait. Br. 33. 5), calls upon his sons to follow him and states that he (Sunahṣepa) would accept them, his wealth (*dāya*) and his learning¹⁰¹⁵. The Nir. III. 4 quotes or summarizes other Vedic passages in which the words *dāya* and *dāyāda* occur. In Pāṇini II. 3. 39 and VI. 2. 5 the word *dāyāda* occurs.

The principal heads discussed under the *cyavahārapada* called *dāyabhāga* are two, viz. partition and inheritance. For at least a thousand years there have been two schools that widely differ on these two heads; they are respectively known as the school of the Mitākṣarā and that of the Dāyabhāga on account of the pre-eminent position of these works in the respective schools. The latter school is predominant in Bengal while the former prevails in the whole of India excepting Bengal. But even in Bengal there are in modern times families governed by the law of the Mitākṣarā. This work in intention and scope does not profess to be a treatise on modern Hindu Law. It concerns itself with pointing out what the law of the Smṛtis and writers of medieval digests was and has to eschew an exhaustive discussion of the modern case-law and legislative enactments that have made the Hindu Law appear in many respects to be entirely different from the law of the commentaries and digests. Generally speaking, only very important divergences made by legislation and case law in the ancient and medieval Hindu Law can and may be pointed out here.

The principal Sanskrit works of the Dāyabhāga school are three viz. the Dāyabhāga of Jimūtavahana, the Dāyatattva of Raghunandana and the Dāyakramasāgraha of Śrīkṛṣṇa Tarkāṅkara. The Mitākṣarā school is subdivided into four sub-schools in which besides the Mitākṣarā, the supreme authority, other works are referred to as supplementary to it and as modifying some of its doctrines viz. the Benares school (which regards the Viramitrodaya as of high authority), the

1014. न ब्राह्मणो हिस्मिन्व्योक्तिः पिपतनोरिव । सोमो ह्यस्य दायाद इन्द्रो अस्या-
भिज्ञस्तिषाः । अथर्व V. 18. 6.

1015. उपेया दैवं मे द्वापरे तेन वै लोपमन्त्राय इति । ऐ. ब्रा. 33. 5 । एष कः कुशिको
वीरो देवराजसन्निव । पुष्पांश्च द्वापरे म उपेता पिशां पाशु च विदुमनि । ऐ. ब्रा. 33. 6.

Mithilā school (which relies on the *Vivādaratnākara*, the *Vivāda-candra* and the *Vivādacintāmaṇi*), the *Mahārāṣṭra* or *Bombay* school (where the *Vyavahāramayūkha* is of the highest authority in *Gujarat*, *Bombay Island* and *Northern Konkan* even superseding the *Mitākṣarā* in some matters and the *Vira-mitrodaya* and the *Nirṇayasindhu* are also relied upon), the *Dravida* or *Madras* school (where the *Smṛticandrikā*, the *Vyavahāranirṇaya* of *Varadarāja*, the *Parāśara-mādhaviya* and the *Sarasvativilāsa* are also works of authority). In spite of some differences in the rules accepted in different provinces in all of which the *Mitākṣarā* is of high authority, all the provinces except *Bengal* are held to be governed by one school. Vide *Ambabai v. Keshav* I. L. R. (1941) Bom. 250.

The words *dāya* and *dāyabhāga* have been variously defined in the digests. *Nār.* (*dāyabhāga*, verse 1) defines the *vyavahāra-pada dāyabhāga* as one in which sons arrange for the partition of their father's wealth. The *Madanaratna* as noted by the *V. Mayūkha* (text p. 94) reads 'arthasya pitryadeḥ' (wealth of the father and others) for 'pitryasya' in *Nārada's* verse. The *Smṛtisāngraha* quoted in the *Sm. C.* and other works states that the word *dāya* applies to wealth that comes to a man through the father or the mother and the *Nighantu* defines *dāya* as the paternal wealth that is to be divided.¹⁰¹⁶ The *Dāyabhāga*, the *Mit.* and others explain that the words 'pitryasya' (father's) and 'putraiḥ' (by the sons) in *Nār.* are only illustrative, the real meaning being that the word 'dāyabhāga' applies wherever the wealth of a relative (father, grand-father &c.) is distributed among his relatives (sons, grandsons &c.) simply on account of their relation to the deceased¹⁰¹⁷ owner. This is borne out by the fact that *Manu* and *Nārada* both speak of the distribution of the mother's wealth also under *dāyabhāga*. The *Mit.* while introducing *Yāj. II. 114* says that the word *dāya* means the wealth which becomes another's property simply by reason of the fact of his relation to the owner. The *V. Mayūkha* (p. 93) defines *dāya* as that wealth which is to be divided and which is not the wealth of re-united members.

1016. विभक्त्यर्थं पितृवृत्तं दायमातुर्मनीषिणः । निघण्टु १. by स्वुत्तिच. II. p. 255, स्प. म. p. 93; पितृवृत्तरामर्तं वृत्ते मातुवृत्तरामर्तं च वत् । कथितं दायशब्देन तद्विभागोभूतो-
च्यते ॥ स्वुत्तिसंज्ञ १. by स्वुत्तिच. II. p. 255, स्प. म. p. 93.

1017. पित्र्यस्येति वृत्तेरिति च दायमति सम्बन्धिमात्रोपलक्षणं सम्बन्धिमात्रेण सम्बन्धि-
मात्रधनविभागेऽपि दायभावापद्वययोगात् । दायभावा 1, 3, तत्र दायशब्देन वदन्ते स्वाभि-
सम्बन्धादेव विनिश्चादयस्य एवं भवति तदुच्यते । निता. : अर्भकस्य विभजनीये धने दायः ।
स्प. म. p. 93.

The word 'dāya' though derived from the root 'dā' (to give) does not apply to 'heritable wealth' in the literal sense (of gift).¹⁰¹⁸ The word dāya is rather conventionally used, though derived from the root 'dā'. In a gift (as stated in H. of Dh. vol. II. p. 841) there are two chief ingredients viz. 'abandoning one's ownership over a thing' and 'bringing about the ownership of another in that thing'. But in the case of dāya the deceased does not of his own accord abandon his ownership with the idea of creating ownership in another. The two (dāna and dāya) are analogous in this that in both there is cessation of the ownership of a man in a thing.

The Mit., the Par. M., the Madanaratna, the V. Mayūka, the V. P. and other works that follow the doctrines of the Mit. divide dāya into two varieties viz. *apratibandha* (unobstructible)¹⁰¹⁹ and '*sapratibandha*' (obstructible). The first occurs in the case of sons, grandsons and great-grandsons, who, by the very fact of their being the sons or grandsons, obtain ownership in the (ancestral) wealth held by the father or the grandfather. In this case the existence of the father or grandfather presents no obstacle (*pratibandha*) to the son's or grandson's taking an interest by the very fact of his birth in the family property that is in the hands of the father or grandfather. Therefore this is called *apratibandha dāya*.¹ But when a man takes the wealth of his paternal uncle or a father succeeds to the wealth of his son because the uncle or the son dies issueless, it is *sapratibandha dāya*, as in these cases the nephew or the father has no right in the uncle's or son's property as long as the uncle or the son is alive or as long as the uncle or son has a son or grandson. That is, the life of the owner or the existence of a son presents an obstacle to the nephew's or father's succession. Hence it is *sapratibandha dāya*.

It is to be noted that the Dāyabhāga, the Dāyatattva and a few other works do not divide dāya into two kinds. According

1018. दीनो हति ख्युत्पत्ता दापशब्दो ददातिपर्यगश्च गौणः, सुतपदजितादिसत्त्व-
निवृत्तिपुण्यपरत्वात्पक्षिफलसाम्यत् । न तु सुतादीनां तत्र स्वागोति । तत्र च पूर्वस्वामि-
न्यवस्थाधीनं तत्त्वदाम्योपरमे यच्च दायं स्वत्वं तत्र नियतो दापशब्दः । दापभागे I. 4-5.
Vide दापभागे pp. 161, 163 for almost identical words. The sv. p. (pp. 411-113)
quotes these words and criticizes them.

1019. अथ च दापो द्विविधाः समतिषम्योऽनतिषम्यश्चेति । यच्च दायं स्वामिनस्त-
त्त्वव्यवस्थेः परभावे स्वं भवति स समतिषम्यो दापः । यथा पित्रादीनां पुत्रादियमम् । यादुत्रपौत्रयोः
पितृपितामहपुत्रं जन्तुन आरभ्य स्वं भवति सोऽनतिषम्यो दापः । तत्र स्वामित्वव्यवस्थापरपा-
रमतिषम्यकरत्वात् । मदनरत्न (च, folio 89).

to them, all *dāya* is *apratibandha* i. e. ownership arises in another only on the death of the previous owner¹⁰²⁰ or on the cessation of the latter's ownership owing to his becoming *patita* or a *sannyāsin* (ascetic).¹⁰²¹ The doctrine of this school is called *uparāmasvatantrāda* (ownership arising on death), while the school of the Mit. holds the view of *jāmasvatantrāda*. This is the great difference between the school of the Dāyabhāga and that of the Mitākṣarā. The former does not recognise that the son, grandson or great-grandson acquires by birth any right of ownership in the ancestral property held by the father or other ancestor.

The two words '*sva*' and '*svāmīn*' are correlative, the idea underlying both is the same and they are two aspects of the same question. '*Sva*' means 'what belongs to a person' i. e. 'property'. It has direct reference to a thing and indirect reference to the owner of the thing. '*Svāmīn*' means 'master or owner' and directly refers to the person owning and indirectly to the thing. Vide Salmond's Jurisprudence, chap. XII, pp. 339-340 (9th ed. of 1937) for the idea of ownership. According to Śiromanībhaṭṭācārya *svata* is a separate *patārtha* (category) by itself, while others say that it is a capacity.¹⁰²²

1020. अतो जीवतोः पित्रोर्धनं पुत्राणां स्वाम्यं नास्ति किं तु परतपोरिति ज्ञापनार्थं मन्वादिग्रन्थम् । एकाः श्रोत्रदोऽपराधार्थः । न चोपरममात्रमेव चित्रितं किंतु पतितपञ्जित-त्वाद्युपलक्षयति स्वत्वविनाशहेतुतामात्म्यात् । दायभाग I. 30-31, p. 18; the vi. st. (folio 99) says 'ते (जीमूतवाहनादयः) सर्वत्र संप्रतिबन्धस्यैव दायस्य सत्त्वात् रिक्तसंविभागा-दीनिदानाभावात् पूर्वोक्तपुत्रिपितरोपान्मूला एव'.

1021. It is to be noted that becoming *patita* entailed loss of the ownership of wealth, even according to Indian writers, only if the proper *prāyaścitta* were not performed. For example, the V. P. (p. 429) states 'पातित्वे न प्रायश्चित्तान्ना-कारण एव स्वतन्त्रादो विभागाभवेत्ता च । अथवा ब्रह्मसाधुर्वा पायश्चित्तमपि पित्रोः स्वब्रह्मेण न स्यात् ।' Ancient and medieval Hindu jurists were very considerate if one compares their prescriptions with the harsh laws against Non-conformists and Roman Catholics prevalent only about a hundred years ago in England and Ireland as briefly disclosed in Pollard's work 'Conscience and Liberty' pp. 46-48. The Caste Disabilities Removal Act (XXI of 1850) provides that so much of any law or usage in force in British India, which inflicts on any person forfeiture of rights of property or may be held to impair or affect any right of inheritance by reason of his renouncing or having been excluded from the communion of any religion or being deprived of caste, shall cease to be enforced as law in British India. This act, therefore, did away with the effects of being *patita* without undergoing *prāyaścitta* or of being excommunicated by a caste for some grave lapse.

1022. स्वत्वं पदार्थान्तरमेवेति हिरोमणिभट्टाचार्याः । स्वतिति उपहारविषयत्वं शक्ति-विशेषो वेद्यमप्ये । तच्च स्वमम्यमिति कौञ्चित् । वि. ता. (ms.) folio 96.

Since in defining *dāya* the idea of *svatva* (ownership) was brought in, many of the digests enter upon a learned disquisition on the question whether *svatva* is to be understood from the *śāstra* alone or is a matter of popular understanding. There is also an ulterior purpose in the minds of some writers in this discussion, viz. that of denying that *svatva* can arise by mere birth. The reasoning of those who say that *svatva* is to be understood from *śāstra* alone is as follows: Gaut. (X. 39-42) lays^{1022a} down five sources of ownership common to all viz. *rikthā* (inheritance), purchase, partition, seizure, finding (of treasure and the like) and further states that in the case of *brāhmanas* acceptance of gifts is an additional source of ownership, conquest in the case of *keatriyas*, gain by agriculture and service in the cases of *vaiśyas* and *śudras* respectively. If ownership were to be apprehended from means other than *śāstras*, then this text of Gautama laying down sources of ownership that are common to all *varnas* and that are peculiar to each of the several *varnas* would serve no useful purpose and would be superfluous. Further Manu (VIII. 340) states that if a *brāhmaṇa* seeks wealth even by teaching or officiating as a priest for a man whom he knows to be a thief, he would be punishable like a thief. If *svatva* is a matter of popular understanding then this is not proper, since the priest or teacher who obtains the wealth from one who is in possession of stolen things would have to be regarded as guilty of no offence as he merely pursues the methods of earning wealth specially prescribed for him by the *smṛti* texts. Further, if *svatva* is not to be apprehended from *śāstra*, such complaints as 'a thing that belongs to me has been stolen by this man' would not be possible, as *svatva* being a purely secular matter the thief would himself be (or would have to be deemed to be) the owner of the thing, because the latter is in possession of it. Thieving is forbidden by *śāstra* and so on the view of *svatva* being apprehended from *śāstra* alone, such a complaint is understandable¹⁰²³. Besides eminent

1022a. स्वामी रिक्थकृत्संविभागपरिग्रहादिभिरेषु । जादृण्ययाधिकं लब्धं कृत्रिपस्य विहितं निषिद्धं वेदपशुद्वयोः । श्रौ. X. 39-42. The Mit. explains: तन्नायतिवन्धो दायो रिक्थम् । कृत्: प्रसिद्धः । संविभागः समलिकम्भो द्वायः । परिग्रहोऽन्यपुंस्य जलतृणकाशादः स्वीकारः । अधिगमो निष्पादः प्राप्तिः ।

1023. वर्तते यस्य पद्वले तस्य स्वामी स एव न । अन्तरस्वमप्यहस्ते तु चौर्यादिः किं न हृदये । तस्माच्छास्त्रे एव स्वात्सन्धे वास्तुभवाद्यपि । अन्तर्वाप्युत्तेजसि न पुनर्न वक्तुमशक्यम् । विहितोपार्जनः शास्त्रे यथावर्णं दृष्टकं दृष्टकं ... न च स्वतुहये तद्वत् स्वेच्छया विनियुज्यते । विनियोगोच सर्वस्य शास्त्रेण निवर्त्यते । संज्ञा q. by स्मृतिच. II. pp. 256-257, मदनरत्न (folio 89), एव. द. p. 416. The last notes that 'तथावर्णं दृष्टकं दृष्टकं' is the reading of the मदनरत्न, but in my ms. of the मदनरत्न the reading is as in the स्मृतिच.

works and writers like the *Smṛtisāṅgraha* and Dhāreśvara¹⁰²⁴ support the view. Those who hold that *svatva* is known only from *śāstra* explain that *riktha* in Gautama's *sūtra* means simply *dāya* and *saṁvibhāga* means partition of *dāya* which establishes the separate ownership of a person on a portion of *dāya* (vide V. P. p. 415).¹⁰²⁵ They further urge that Gautama's text does not specifically mention birth as a source of ownership.

Others headed by the Mit. hold that *svatva* is apprehended from worldly usage and not from *śāstra*. Their reasoning is: (1) just as rice effects an ordinary worldly purpose, so *svatva* brings about worldly transactions such as sale. What is not owned by a man does not enable him to effect such worldly objects and transactions as sale or mortgage. Such matters as the *Āhavanīya* fire that are prescribed by the *śāstras* are not useful in effecting secular purposes, but only *śāstric* ones. The *Āhavanīya* fire may be used in cooking rice, but that is in virtue of its ordinary nature as fire and not in its *śāstric* nature of being the *Āhavanīya* fire.¹⁰²⁶ (2) Even among Mlecchas and lowest peoples who are quite innocent of the knowledge of *śāstras*, the ideas of ownership arising from transactions of sale and the like do exist. Further (3) learned men well-versed in

1024. एतावन्महाकारणं धारेश्वरनन्देनलघुवाचितम् । मदनराज (folio 90); उपनिषत्
चैतन्येश्वरसूत्रिणा । स्मृतिच. II, p. 257. It is somewhat strange that Dhāreśvara
who is no other than the celebrated king Bhoja of Dhārā should be styled
bhāṭṭa by the Madanaratna and *ācārya* by the Mit. (on Yāj. III, 24)
and the V. Mayūkha (p. 39).

1025. When a man dies his wealth is the *dāya* which several persons may inherit. In their case, it becomes their joint property. So their ownership, being joint, is denoted by the word '*riktha*'. The joint owners become exclusive owners of definite parts of the *dāya* by partition; thus partition is a source of ownership (in this case exclusive ownership of distinct parts by several). But if there is a single heir then there can be no *saṁvibhāga* (partition) and so the source of his ownership is *riktha* and not *saṁvibhāga*. When there are several heirs *riktha* is on this view a source of joint ownership only. It must be said that on the hypothesis of Jīmūta-vāhana, *riktha* and *saṁvibhāga* rather coalesce with one another and cannot be distinguished so well as on the theory of the Mit.

1026. Vide the Mit. (on Yāj. II, 114), V. P. pp. 419-422, V. Mayūkha pp. 89-90, Par. M. III, pp. 482-483 for elaboration of this view. The S. V. p. 396 ff while accepting the view that *svatva* is *laukika* does not accept the reasoning of the Mit., particularly with regard to the *Āhavanīya* fire.

the Mīmāṃsā such as Prabhākara¹⁰²⁷ (on Jaimini IV. 1. 2) and

1027. The Mit. (on Yā), II. 114) quotes a passage of Prabhākara on the *lipsāsūtra* and explains it. Jaimini's sūtra (IV. 1. 2) is यस्मिन्मीतिः पुत्रस्य तस्य लिप्सापलक्षणप्रतिपत्त्यात्. In this sūtra the word *lipsā* occurs. Therefore this is called *lipsāsūtra*. The words अर्जनं स्वयं नापादयतीति विनित्यिष्ये occur in the *Dāyabhāga* also (II. 67 p. 49) and in *Medhātithi* on *Manu* VIII. 417. These words are quoted in the Mit. as taken from Prabhākara (called *Guru*) and so it follows that even *Medhātithi* quotes from Prabhākara. The earliest extant commentary of Sabara offers three explanations of this sūtra, which deals with the question of what is *kratvartha* and what is *puruṣārtha*. The third explanation concerns itself with the rules about acquiring wealth (which is necessary for performing every sacrifice) such as acceptance of gifts in the case of brāhmanas. The question is whether these rules about the means of acquiring wealth are *kratvartha* or *puruṣārtha*. If they are the former (i. e., if they are meant to be directly connected with the sacrifice) then a sacrifice performed with wealth not acquired according to the rules of sūtra will be defective or a nullity. But if the rules are *puruṣārtha* (i. e., addressed to the sacrificer only or to his conscience and sense of dharma) then even if the sacrifice is performed with wealth not acquired in accordance with sūtra there will be no defect in the sacrifice itself, only the acquirer will be at fault and may have to perform *prāyaścitta*. Says Sabara: एवं वा ज्ञाप्यार्जनसुदाहरणम् । इह ज्ञाप्यार्जनं तेरेतिविधौः श्रूयते । नाष्ट्वनस्य प्रतिग्रहादिना राजन्यस्य जवादिना वैष्यस्य कुश्यादिना । तत्र सन्देशः किं कर्तव्यं ज्ञाप्यपरिग्रह उत पुत्रपार्थ इति ।

The Mit. points out that in the plausible view (*pūrvapakṣa*) and the established conclusion (*siddhānta*) it is assumed that acquisition of wealth by acceptance of gift is a matter known from worldly usage (*lohasiddha*). The comment of Prabhākara (called *Guru*) on this sūtra is not yet available in print. The *Sm.* C. II. pp. 257-258, the *Madanaratna*, and V. P. p. 420 quote a passage from the *Nayavivēka* of Bhavanātha on the same subject and explain it. The *Madanaratna* says 'उक्तं चैतन्नपचिक्रे ज्ञानाकरमताम्बुजप्रभाकरेण भवनाथेन । लोकाभिज्ञं वा अर्जनं जग्मादे । अत एवाभिज्ञं यथमलोकाधीविषयतया स्थिते निषण्णपार्थो (विषयतया स्वपरिग्रहनिषण्णपार्थो) स्मृतिव्याकरणादिस्मृतिवत् ।' The passage as printed in V. P. p. 420 (अत एवाभिज्ञं यथमलोकाधीविषयपरिग्रहे तन्निषण्णपार्थो स्मृतिः) is corrupt and hardly makes any sense. The V. *Māyūkha* simply refers to Bhavanātha without quoting him. The *Vi. Nā.* (folio 98) remarks 'मीमांसकेरूपकं प्रतिग्रहादिविषयमानीं पुत्रपार्थत्वं तेन विना अर्जितद्वये पुत्रपरिग्रह द्वयोः कर्तुमितिर्भवयेत् ।' Vide H. of Dh. vol. II. pp. 129-130 for quotations from several smritis laying down various means of livelihood. *Manu* X. 115 enumerates seven sources of wealth as sanctioned by sūtra viz. finding (of treasure), *dāya* (inheritance), purchase, conquest, lending for interest, work (agriculture and trade), acceptance of a gift from a worthy person and in X. 116 mentions ten means of maintaining oneself (in distress). The *Mahābhāṣya* (vol. I. p. 483) on Pāṇ. II. 3. 30 states that a thing becomes one's own in four ways viz. by purchase, by seizure, by begging or by exchange 'यदेतत्त्वं नाम ऋषिभिराकार्यतेति कथनादपहरणाद्याया विनिमयादिति.' It must be remembered that the enumeration of the means of acquiring property in the dharma-sūtra works is not exhaustive but only illustrative.

Bhavanātha, author of the *Nayaviveka*, hold that ownership which springs from certain fixed sources only (such as purchase) is a matter of worldly usage or experience. Bhavanātha says: the sources of acquisition such as birth and purchase &c. are known from the world. The conception about the sources of ownership was not started for the first time by the śāstra, but such sources have been known from times immemorial (long before the smṛtis). That is, the recognition of the sources of ownership is prior and śāstra only systematises them subsequently. Therefore the smṛti of Gautama (X. 39) only assigns their proper spheres to the several sources of ownership that are already well-known (viz. five are common to all, acceptance of gifts is peculiar to brāhmaṇas and so on). In this respect it is like the grammar of Pāṇini. Pāṇini does not create or lay down new words but he takes the words already current in the language and introduces a system about their formation. Similarly Gautama only voices a certain fixed system among the several sources of ownership. The Mīl. and its followers say that Gautama simply repeats the several sources of ownership known in ordinary worldly life (as the V. Mayūkha says 'lokasiddhakarāṇānuvādakam'). The Mīl., Par. M. III. p. 481, S. V. p. 402 and others hold that rikṭha and samvibhāga in Gautama's sūtra stand for apratibandha dāya and sapratibandha dāya respectively.¹⁰²⁸ The Mīl. meets the other arguments of its opponents by replying that in the first place that even ordinary popular usage does not recognise that the thief becomes the rightful owner by simply possessing the thing stolen and that in the case where a person says 'this man has stolen my property' there is doubt and dispute whether the man charged has got ownership by purchase or the like.

The purpose of this discussion of the topic whether ownership is only known from śāstra or is a secular matter is, according to the Mīl., as follows:—Manu XI. 193 (= Viṣṇu Dh. S. 54. 28) states that when brāhmaṇas acquire wealth by reprehensible actions (such as accepting a gift from an unworthy person or engaging in the sale of articles which he should not sell)

1028. The word rikṭha is often used in the sense of sapratibandha dāya also as in Gaut. XII. 37 (rikṭhabhāja nam prākuryah) and Yāj. II. 51 (rikṭha-grāha nam dāpyah), Bauḍ. (rikṭham mṛtāyāḥ kanyāyāḥ) q. by the Mīl. on Yāj. II. 146. Vide *Hai Parson v. Bai Somi* 36 Bom. 424 at pp. 428-434 for an exhaustive exposition of the basic principles underlying the two kinds of dāya in the Mīl. and the Vyavahāra-mayūkha).

they are purified from the sin by abandoning that wealth, by repeating the sacred texts (like the Gayatri) and by austerities. If ownership springs from śāstra alone, what is earned by a person in ways condemned by śāstra cannot become the property of that man and so his sons cannot divide what is not his property. But if ownership is deemed to be a secular matter (*laukika*) then even what is obtained by condemned means becomes the property of that man, his sons incur no blame (though the acquirer may have to perform penance) and can divide that wealth (which is *dāya*), since Manu X. 115 enumerates *dāya* among the seven approved sources of wealth. The Madanaratna does not approve of this. Its reason briefly is that Manu XI. 193 simply lays down a penance, but does not say that wealth so obtained does not become the acquirer's property, that it is on account of this that Manu does not prescribe any special fine or punishment for one who acquires wealth by means of a bad gift, as he prescribes for a thief and that what is acquired by theft does not become the property of the thief and his sons cannot divide it and would incur punishment if they do so. V. P. (pp. 423-424) refers to the views of the Mit. and the Madanaratna and approves of the views of the former.

This discussion leads on to the next question, viz. whether ownership arises from partition or whether partition takes place of what already belongs to oneself (by birth). This subject has exercised the minds of writers on Dharmaśāstra from very ancient times. It should be noted that the difference of opinion relates only to the case of sons, grandsons and great-grandsons. All writers are agreed that persons other than these have no rights by birth in the wealth of their relatives. Those who oppose the view that sons acquire right by birth argue as follows:—

If sons have ownership by birth in ancestral property, then, on the birth of a son, the father cannot enter upon such religious duties as consecrating Vedic fires (which entail the expenditure of ancestral wealth) without the consent of the son. This would be opposed to the Vedic injunction "a man, whose hair is yet dark and who has had a son, should consecrate the sacred Vedic fires". Further, *Smṛti* passages stating that a gift made by the father to one out of several sons as a favour (*Nār. dāyabhāga* 6) or by the husband to his wife out of affection is not liable to partition would be meaningless, since such gifts cannot be made without the consent of the sons (on the

theory that sons acquire property by birth). Besides, there are *smṛti* texts like those of Devala¹⁰²⁹ which expressly negative the son's ownership during the father's lifetime. Manu IX. 104 and Nār. (dāyabhāga 2) enjoining that sons should divide wealth after the father goes to heaven (because the sons are not masters when the parents are alive, as Manu says) indicate that sons have no ownership by birth. Moreover *śrotā* is apprehended only from *śāstras* (like Gautama), which do not expressly enumerate birth as a source of ownership along with purchase and the like. Therefore the ownership of the son or sons arises on the cessation of the ownership of the previous owner (by his death or by his becoming *pāṭita* or becoming an ascetic). When there is a single son, he inherits on the death of the father and there is no necessity of a partition. But when there are several sons, they jointly inherit paternal wealth and can become exclusive owners of separate parts of the paternal wealth by partition alone. As this last is the most usual case, it is said that *śrotā* arises from partition (*vibhagāt śrotam*). If this doctrine that ownership arises by partition alone were literally interpreted, then an only son inheriting his father's property will have no ownership as urged by the Vyavahāra-nirṇaya, since there can be no partition in his case¹⁰³⁰.

The arguments advanced by those who hold that ownership in ancestral wealth arises by birth are as follows:—

It has been established that ownership is a matter of ordinary worldly usage. It cannot be denied that it is quite well-known to all ordinary people that sons acquire ownership by birth. Besides there is the text of Gautama¹⁰³¹ "the śākyas hold that one acquires ownership by birth itself". Moreover there are numerous *smṛti* passages like those of Yāj. II. 121,

1029. पितृपुंस्ते पुत्रा विभजेयुर्धनं पितुः । अस्वाम्यं हि भवेद्देवा मिद्वेदे पितरि तिष्ठते ॥
देवद. q. by दायभाग I. 18, p. 13, दीपकालिका (on पा. II. 114), वि. र. p. 456, परा. वा. III. p. 450.

1030. तथा विभागात्स्वपक्षे एकपुत्रस्य मातापित्रोस्त्वर्थं विभ । भागाभात स्वत्वं न स्यात्
तेन कुतश्चेतादेव पितृपैतामहद्वयेपि पुत्रस्य स्वाम्यमस्त्वेष । स्वय. नि. p. 412.

1031. तथा 'उत्पत्त्यैवायं स्वामित्वं लभतेऽप्याचार्याः' इति गौतमवचनमप्युक्तम् । मिता. on
पा. II. 114. This is variously read by the digests and commentaries. The Madanaratna, Sm. C. II. p. 238 and Dāyatatva p. 162 read उत्पत्त्यैवायं स्वामित्वं लभतेऽप्याचार्याः. The sv. m. p. 89. reads 'लभतेऽप्याचार्याः', while स. वि. reads 'उत्पत्त्यैवायं स्वामित्वं लभतेऽप्याचार्याः' (p. 402). Both Sm. C. and S. V. explain 'उत्पत्त्यैवायं मातुर्गर्भे प्रसिरोत्पत्त्यैवायं', while the सुप्रासिनी and the बालम्भट्टी on the मिताक्षरा explain उत्पत्त्यैवायं as जन्मस्यैव.

Br. (S. B. E. 33 p. 370 verse 3), Kāt. (839), Vyāsa and Viṣṇu Dh. 1022 S. XVII. 2 which expressly state that in the paternal grandfather's wealth, the father and the son have equal ownership (and so the right of the son must be by birth). Those who uphold the son's ownership by birth repel the arguments advanced in favour of the opposite theory as follows:—The Vedic text enjoining consecration of Vedic fires at a certain age indicates that the father has the power to spend for religious rites from ancestral wealth even after the birth of a son. Similarly as head of the family and its manager, the father has independent authority to spend ancestral wealth (except immovable property) for indispensable acts of religious duty expressly enjoined by Vedic and Smṛti texts and for making gifts of affection, for maintenance of the family and for ridding the family of distress. Further the father or the manager of the family can dispose of even immovable property by mortgage or sale in a season of distress or for the benefit of the family and for necessary religious purposes (such as śrāddhas 1033 etc.)

Ownership has to be distinguished from possession and custody. Further ownership is of various kinds, such as corporeal and incorporeal, sole ownership and joint ownership, ownership as trustee and beneficial ownership, vested and contingent. Even Western writers on Jurisprudence like Austin, Pollock and Salmond, find it difficult to define the exact meaning of ownership. Austin (Lecture XLVII) defines

1032. द्रव्ये पितामहोपाधे रथाधरे जडमे तथा । समन्तशिलमाश्रयात् पितुः पुत्रस्य चैव हि ॥ बृह. q. by व्यासभाष II. 50 p. 46. अपराकं p. 728, व्यव. नि. p. 410, दीप-कलिका, स. नि. p. 374, नि. र. p. 461, न्य. स. p. 98. This is ascribed to व्यास by स्मृतिच. II. p. 379. पैतामहं समानं रथात् पितुः पुत्रस्य चोभयोः । स्वयं चोपाजिते पित्रा न पुत्रः स्वाम्यमर्हति ॥ कात्या. q. by अपराकं p. 728, व्यव. नि. p. 410, स्मृतिच. II. p. 379: कर्माभावे युद्धक्षेत्रे पितृपुत्रयोः समंशिनः । पैतृके न विभागार्होः सुताः पितुर-निष्पूतः ॥ व्यास-q. by अपराकं p. 728, व्यव. नि. p. 410, स. नि. p. 475 (reads पुत्रपौत्राः समंशिनः), नि. र. p. 461: पैतामहे स्वयं पितृपुत्रयोः तुल्यं स्वामित्वम् । विश्व-धर्मसूत्र 17, 2.

1033. तस्मात् पैतृके पैतामहे च द्रव्ये जन्मनैव स्वत्वम्, तथापि पितुरावश्यकेषु धर्मकृत्येषु वाचनिकेषु यसाद्दानकुटुम्बभरणपदिनोद्धारदिषु च स्वाधरपदतिरिक्तद्रव्यविनियोगे स्वातन्त्र्यमिति नियमः । रथाधरे तु स्वाजिते पित्रादिभ्यो न पुत्रादिवारतन्त्र्यमेव । ... अस्यापवादः । एकौपि रथाधरे कुर्वाणानामनविक्रयः । आपत्काले कुटुम्बार्थं धर्मार्थं च निवेष्टः ॥ इति । मिता. ०० वा. II. 114. This is the basic passage of the Mit. on which innumerable decisions have been given in the law reports, one of the latest and most authoritative being *Brij Narain v. Mangla Prasad* L. R. 31 I, A. 129 quoted on p. 445 above.

property or dominion as the right to use or deal with some given subject in a manner or to an extent, which though not unlimited, is indefinite. Pollock defines ownership as the entirety of the powers of use and disposal allowed by law. But the idea of ownership does not require, according to Sanskrit works on Dharmaśāstra, that the owner should always be able to do with his property as he pleases. On the contrary the śāstras lay down restrictions on the owner, enjoining upon him not to make gifts to the detriment of his family (vide Yaj. II. 175 "suum kulaṁbāhiraśthena dayam" and the verse of the Smṛti-saṅgraha "na ca svamucyate" quoted in note 963 above). Therefore property does not comprise only what one can dispose of at one's sweet will, but what is capable (in appropriate circumstances only) of being disposed of as one¹⁰³⁴ likes. A person may be prevented from dealing with his property as he likes by the king or by the rules of śāstra, by public opinion, by his own inclinations and by the pressure of those around him. But what he owns is theoretically capable of being disposed off by him as he likes. The Madanaratna puts forth the illustration that seeds kept dry in a granary do not sprout, yet they have the capacity of sprouting and so are as well denominated seeds as others that sprout. There are various grades of the limitations on property, such as the father's power, the widow's power and so on. What a person earns should belong to him, should be his property. But there are passages like Manu VIII. 416 and Nar. (abhyupetyāśūrūṣa, verse 41) that state¹⁰³⁵ "three are declared to be without wealth viz. the wife, the son and the slave; whatever they earn is for him to whom they (wife, son and slave) belong". It has been stated

1034. न च यथेष्टविनिर्णयार्थं स्थापयति तर्हि अतः किं तर्हि यथेष्टादीनिपानेपरोक्षत्वम् । तत्त्वत् प्राप्ते कुटुम्बभरणादिविनिर्णयानिपयनेन विनिर्णयान्तरविषयताम्लभमानस्याप्यवि-
तत्त्वमुक्तमन्येव । यथा कुतश्चिदेतोरदकुरोत्यादृतमकुर्वतापि कुल्लादिविजात्य बीजस्य बीज-
त्वयुक्तमदकुरोत्यादृतमप्यन्यत् । उक्तं च तत्त्वविवेके । तत्त्वत् तस्य तद्वर्हि येनार्जितमिति । तद्वर्हि
यथेष्टविनिर्णयार्थम् । भट्टमतानुसारीणि तन्त्ररत्नेषु । यथेष्टविनिर्णयार्थं हि स्वत्वं केवल-
कालधर्मेऽप्यत्राविनिर्णयार्थं यथेष्टविनिर्णयत्वाभावात् (विनिर्णयत्वाभावात्स्वत्वाभावात्) इति ।
विनिर्णयमत्र विनिर्णयार्थं 'अर्हं कृत्यवृत्त्यर्थे' पाणिनिस्मरणात् । मन्दरान्त. 'अर्हं कृत्य-
वृत्त्यर्थ' is पाणिनि III. 3. 169. The passage यथेष्टविनि ... त्वाभावा इति occurs in
the तन्त्ररत्न (सरस्वतीमञ्जरी series) part I p. 19. Vide esp. p. 416 for a similar
statement and p. 422 for the illustration of seed in the granary.

1035. भार्गो दुवश्च दासश्च त्रय एवाधनाः स्मृताः । यत्ते समधिक्यञ्चिन् इत्येवं तस्य
तद्वन्म ॥ मनु VIII. 416 ; जयमेकवर्त्त 33. 64 reads त्रय एवाधना राजन् भार्गो दासस्तथा
सुतः । यत्ते &c. ; नारद (अश्व. 41) is अथनाश्रय एवैका भार्गो दासस्तथा सुतः । यत्ते &c.

Dhāreśvara viz. that when the father desires to make a partition, he may distribute his self-acquired property as he likes among his sons, but as to the property he got from his own father (i. e. the grandfather of his sons) he has the same ownership that sons have and he cannot make an unequal division at his sweet will. The *Dāyabhāga*¹⁰³⁹ rejects the view that Yāj. II. 121 enables the son to demand partition of the grand-father's property from the father even against the will of the latter or that father and son have equal shares in the grandfather's property. The same remarks apply to the texts of Viṣṇu and others viz. that in the grandfather's property father and son are equally owners and that the words "tulyam svāmyam" or "samamamēitvam" do not mean that father and son take the same share therein.

From the above discussion it will be clear that the two schools of the *Dāyabhāga* and of the *Mitākṣarā* were not started by them for the first time, but each had respectable antiquity behind it. Smṛtis like those of Manu, Nārada and Devala and eminent authors like Udyota and Dhāreśvara had put forward the doctrine of *uparāma-svatecāvāda*, while the Smṛtis of Yāj., Viṣṇu, Br. espoused the doctrine of *janmasvatecāvāda*. Viśvarūpa who commented on Yāj. (in the first half of the 9th century) holds that ownership arises by birth¹⁰⁴⁰. The *Mitākṣarā* further supports that theory by citing a sūtra of Gautama (*utpattynōca* etc.) which is not found in the extant Gautama-dharma-sūtra. This sūtra does not occur in Aparārka and several other works and is stated by Śrīkrṣṇa Tarkālaṅkāra (on *Dāyabhāga* I. 21 p. 14) to be not authoritative (*amūla*). These facts emboldened Dr. Jolly to go so far as to make the facile suggestion that it was fabricated by Vijñāneśvara or his predecessors (Tagore Law Lectures p. 110). We have seen that so early a writer as Viśvarūpa was excited over the question whether ownership arises on partition or by birth. The learned Doctor has failed to note that the ancient commentator Medhātithi (about 900 A. D.) favoured the view of ownership by birth and quotes (without name) the sūtra in a slightly different form (on Manu

1039. अतः पितापुत्रयोः पैतृमन्त्रधने समविभागापि बहसं साम्यमिति तच्चरं युक्त्यां न विभागस्यावत्त्वार्यमिति मतद्वयमपि हेतुम् । दायभाग II. 18 p. 31.

1040. वा निवन्धया विभागस्तुतिः सा स्वपुत्रप्राप्तद्वयवतो द्रष्टव्या । अतः स्वते सति विभाग इति सिद्धम् । निबन्धय on 'भूयं पितामहोपाजा' (वा. II. 124).

IX. 156).¹⁰⁴¹ So it was not necessary for Vijñāneśvara to fabricate a sūtra nor for any one else, for even in the absence of Gautama's sūtra the texts of Yāj. and others were quite capable of the interpretation put on them by the Mitākṣarā. It has to be noted that the Dāyabhāga¹⁰⁴² does admit that in some (texts?) ownership is stated to arise by birth itself (*koṣaṭ janmauveci*) and it explains that the words are not to be taken literally, but that birth is said to be the source in an indirect way, as the relation of father and son is based upon birth and on the death of the father the son's ownership arises (therefore though ownership directly arises on death, birth may be said to be the source of it as the son is the first heir because of his being born as a son to the father). The Dayatattva does not say that the sūtra of Gautama is not authoritative, but explains it away on lines similar to those of the Dayabhāga. It may be stated here briefly that the Dayabhāga differs from the Mitākṣarā in four main points:—(1) The Dāyabhāga denies the theory that property is by birth, while the Mit. accepts it; (2) the Dayabhāga lays down that the right to inherit and the order of heirs is determined by the principle of religious efficacy, while the Mit. school holds that blood relationship is the governing factor in this matter; (3) the Dayabhāga holds that members of a joint family (such as brothers or cousins) hold their shares in quasi-severalty and can dispose of them even when there is no partition by metes and bounds; (4) the Dayabhāga holds that even in an undivided family the widow succeeds

1041. On मनु IX. 209 मेघल्लिपि says 'यतस्ते पितामहपुत्रस्येष्टाते । तथा चोक्तं चूर्णं चोभयोरिति । ... सर्वे पितामहपुत्रमात्रः सत्यपूर्वकत्वादिभावरत् ।' on मनु IX. 156 he says तथाप्युक्ते सर्वेषां पुत्रोऽप्यवयवसो न सन्भवेत्केशानिति । तदेतद्वृत्तम् । जलैरल्पतमाश्व-
त्तम् । उत्पन्नो वार्यस्वाम्यमि-याचार्यो इति ।

1042. कश्चिज्जन्मैवेति (जन्मनैवेति ?) च जन्मनिवन्धनत्वात् पितापुत्रसम्बन्धस्य विद्-
जरणस्य च सावकारण्यत्वात् परम्परया कर्णम् । दायभावा 1 20 p. 13. अच्युत and some
of the commentators of the Dāyabhāga refer these words to the sūtra of
Gautama which they read as 'उत्पत्तैवार्थं स्वामित्वात्पुत्रेतेत्याचार्याः' । वत् मिताक्षरायां
'उत्पत्तैवार्थं स्वामित्वात्पुत्रेतेत्याचार्याः' इति शीतलचन्दनं तदपि पितृस्त्वोपरमेऽप्युक्तं तदु-
क्तं तस्मात्पुत्रस्य स्वामित्वेन जन्मकथने पुत्राणां स्वामित्वात्पुत्रे इत्येव लभ्य-
सम्बन्धीत्याचार्याः सत्यन्ते । दायतत्त्वा p. 162. This is quoted almost in the same
words by the स्व. न. p. 414 and on p. 415 the स्व. न. appears to hold that the
explanation of the दायभावा quoted above relates to the sūtra of Gautama.
अतश्च उत्पत्तैवार्थं स्वामित्वमिति शीतलचन्दनस्य पञ्जीकृतवाक्येन तद्वृत्तमात्रं वार्यपरिको-
षतिसंस्मृत्युक्तं भाष्यवार्ते कृते तदपि स्पष्टमेव । स्व. न. p. 415; vide स्व. न. p. 426
for an elaborate refutation of the Dāyabhāga passage (quoted above) and
other passages that follow.

to her husband's share on his death without male issue, while the Mit. school holds that she does not do so.

Various attempts have been made to explain why in Bengal alone the laws of succession and inheritance should diverge materially from the laws prevailing in the rest of India. In two learned papers 'on the origin and development of the Bengal school of Hindu Law' contributed to the *Law Quarterly Review* (vol. XXI for 1905 pp. 380-392 and vol. XXII for 1906 pp. 50-63) Mr. Justice Saradacharan Mitra tries at some length to advance a theory of his own: 'The commercial spirit of the newly formed nation in the eastern corner of the Indian peninsula with its deltaic character and nearness to the sea, the new ideas which other nations trading with it were bringing in every day, the necessary admixture of races in some parts of the country, the religion of Buddha which for centuries was here the religion of the sovereign as well as of the people and the influence of the Buddhistic *tantras* combined to bring about a law of property dissimilar in material respects from the rules propounded by Brahmanical sages of old and explained and commented upon in the *Mitākṣarā* and the books based on the same'. His idea is that, as Buddhism profoundly affected the position of women and as *tantras* like the *Mahānirvāṇa* subscribed to the exaltation of the feminine element in nature, the ancient law of property, particularly in relation to women, came to be affected and conceptions of individual ownership, of freedom from restrictions on alienation and of the rights of females arose in Bengal which were incorporated by Jimūta-vāhana in his *Dāyabhāga*. With the greatest respect to the learned writer, it must be said that the grounds he urges are far from convincing. A thorough examination of his thesis cannot be undertaken here for want of space. But a few remarks must be made. As regards maritime activity the West coast of India was far more in touch with seafaring and commerce with the West than even Bengal, as the mention of the ports of Barugaza (Broach) and Kalliéné (modern Kalyan) by Greek writers, the finding of hoards of Roman coins and the existence of Syrians on the West Coast clearly establish. Buddhism had spread to central and western India as early (if not earlier than) the period when it could have spread to Eastern Bengal and Assam. Sanchi, Bhilsa, Bharhut, the Nasik and Karla caves bear eloquent testimony to the influence of Buddhism in central and western India for centuries before and after the Christian era. Besides as Mr. Justice Mitra himself

admits 'Buddhism had not its own law of property' (Law Quarterly Review vol. XXI p. 388). Buddhist countries like Burma themselves borrowed their laws of succession and inheritance from the Manusmṛti. Vijñāneśvara is far more liberal to women than Jimūtavāhana, who does not allow any woman to succeed as heir unless she is expressly mentioned as an heir in the smṛti texts. The Mahānirvāṇa-tantra treats a sister and stepmother as near heirs and allows even a paternal uncle's widow and son's daughter to succeed; but under the Dayabhāga these are not at all heirs. One branch of the Mītakṣarā school, viz. that of the V. Mayūkha in Western India is far more liberal about the claims of women than any school. The Marumakkatayam and Aliyasantan law in force in some districts of South India and among certain communities like the Nambudri brāhmanas and Nairs go to the other extreme in their regard for women but no one has so far traced that law to Buddhist or Tantric influence. The peculiarity of the Dayabhāga, viz. the principle of religious efficacy is far more remote from rules of affinity given in the Mahānirvāṇa-tantra than the principle of consanguinity espoused by the Mītakṣarā school. Mr. Justice Mitra is wrong in his estimate of the age of Jimūtavāhana. As stated above (on p. 557) Jimūtavāhana relies on authors like Udyota and the smṛtis of Devala and others. It is best to admit that no satisfactory explanation can be given of the peculiar doctrines of the Dayabhāga. They have an indigenous and independent origin and growth.

Vibhāga (partition) is defined by the Mit. 1043 as the allotment to individuals of definite portions of aggregates of wealth over which many persons have joint ownership. The Dayabhāga found several faults with this definition, the principal criticism being that it is cumbrous and farfetched to assume that the (joint) ownership of several (sons and the like) is first produced in the entire wealth of the father and then to hold that this joint ownership is subsequently destroyed. Its own definition is: "*Vibhāga* means the indication of the ownership (of one out of many) by the casting of a ball or pebble (on a definite part of the land or cash), which (ownership) arises with

1043. विभागो नाम वृत्तमसमुदायविषयाजामलेकस्वाध्यागो तदेकदेशेऽप्यपरयापनम् ।
मिता. on या. II. 114, व्यवहारसार p. 212; अपराकं p. 729 is almost the same;
एकदेशोपान्तस्यैव भुविस्थादावुत्पन्नस्य स्वत्वर्य विनिमननामाणाभावेन वैशेषिकस्य ज्ञा-
रानहृतया अयवस्थितस्य मुद्रिकापातादिना व्यञ्जनं विभागः । विशेषेण भञ्जनं स्वत्वज्ञापनं वा
विभागः । दाप भाग I. 8-9, p. 8.

reference to a portion only (of the heritage of land and cash), but which is indefinite because it is not possible (for one man) to deal specifically with a particular portion (of the heritage) since there is nothing to show for certain what portion belongs to whom". The *Dayabhāga* denies that ownership jointly arises in all co-sharers (before partition) over every portion of the heritage and states that it arises in portions of it but there is no certain indication to show which part belongs to whom and that the portion of each is made definite and ascertained by partition effected by casting a ball or pebble on a portion (saying 'this is A's exclusive portion' etc.). The *Dayatattva*¹⁰⁴⁴ (p. 163) criticizes this definition. If before partition each of the co-heirs has ownership in part only of the entire heritage, what assurance is there that the allotment of a part to one co-heir by means of casting a ball will be as to the same portion over which his ownership arose before the partition? The *Dayatattva*, though differing¹⁰⁴⁵ from the *Mit.* as to the doctrine of ownership by birth, agrees with it as to the definition of *vibhāga*. The differing definitions of *vibhāga* given by the *Mit.* and the *Dayabhāga* lead to different results. Under the *Mit.* when there is a joint family of father and sons or grandsons, all these are coparceners and the ownership of the coparcenary property is in the whole body of coparceners i. e. there is unity of ownership while the family remains joint, no coparcener can say that he is owner of a definite share, one fourth or one fifth etc. A coparcener's interest is fluctuating, is capable of being enlarged by deaths and is liable to be diminished by births. It is only on partition that a coparcener becomes entitled to a definite share. On the other hand according to the *Dayabhāga* there is no ownership by birth, the sons on the father's death constitute a coparcenary but the ownership of the family property is not in all the sons as a body. Every son takes a defined share, the moment the ownership of the father ceases (owing to death etc.). The share so taken does not fluctuate with births and deaths. The sons are coparceners in the sense that their possession of the property

1044. तत्र विभागस्तु सम्बन्धान्तरसद्भावेन भूतिरूपद्वाराप्यक्षरप...मुद्रिकापातादिना अमुकरूपेदमिति विशेषेण भजनं स्वातन्त्र्यापनमिति वदन्ति तत्र समीचीनम् । यत्र अस्व स्वतः तत्रैव मुद्रिकापात इति कथं वचनाभावाज्ज्ञेयम् । द्वापतत्त्व p. 163.

1045. वस्तुतस्तु पूर्वस्मान्निस्त्वोपरि सम्बन्धाविशेषात् सम्बन्धिनां सर्वधनप्रभृतस्वत्वस्य मुद्रिकापातादिना प्रादेशिकस्वत्वव्यवस्थापनं विभागः । एवं हस्तधनगतस्वत्वोत्पादविना-
हानपि कल्पयेत् । द्वापतत्त्व p. 163.

inherited from the father is joint i. e. there is *unity of possession*, though there is no *unity of ownership*.

According to the Mitākṣarā sons take by birth an interest in ancestral estate. Suppose A is sole owner of an ancestral estate and has no issue. In that case there is no coparcenary. But the moment a son is born to him, a coparcenary is started. That is, under the Mitākṣarā the birth of a son starts a coparcenary. Under the Dāyabhāga there is no coparcenary between father and sons as the latter acquire no rights by birth even in ancestral property but it may subsist between brothers or uncles and nephews. Under the Dāyabhāga, the *death* of a man may start a coparcenary among his sons (who will be brothers).

Partition has two senses, (1) division by metes and bounds and (2) separation or severance in interest. Under the Mitākṣarā it is possible to have partition in both these senses. The members of a coparcenary may define, at a particular moment, the shares that each would be entitled to; but the actual division of property by metes and bounds may be postponed to a future date and in the intervening period they may enjoy the property in common as before. This is clearly brought out by the Vyavahāramayūkha¹⁰⁴⁶ when it says "even in the absence of joint (family) property severance (of interest) takes place also by a mere declaration in the form 'I am separate from thee'; for severance is merely a particular mode (or state) of the mind and this declaration merely manifests that (state or mode of the mind)". The S. V. (p. 347) has a similar passage. It is here stated that an unequivocal declaration of intention to separate effects the severance of a member from the joint family and that it is not absolutely necessary that there should be any joint property or that the property be divided by metes and bounds. This last follows as a matter of course when there is a severance of interest. This proposition has been accepted by the Privy Council¹⁰⁴⁷ and this passage of the Vyavahāra-

1046. दण्डसामान्यभाषेपि स्वसौह विभक्त इति व्यवस्थानात्रेणापि भवत्येव विभागः । बुद्धिविशेषमात्रमेव हि विभागः । तस्यैवाभिप्रायलिङ्गेयं व्यवस्था । स्प. म. p. 24; अनेन ज्ञायते परिभाषां विना सङ्कल्पनात्रेणापि विभागसिद्धिः । म. वि. p. 347.

1047. Vide *Pandit Saraf Narain v. Iqbal Narain* 40 I. A. p. 40 (=13 Bom. L. R. 436) for this proposition and *Soundararajan v. Arunachalam* 39 Mad. 159 (P. B.) at pp. 174-175, 183 and *Girjabai v. Sadashiv* 43 I. A. 151 at p. 160 (=18 Bom. L. R. 621) for citation of the above passage of the V. Mayūkha.

mayūkha has been quoted in several cases. What constitutes an unequivocal declaration of intention to separate has as usual given rise to a good deal of case law which has to be passed over here. Under the *Dayabhāga* heirs succeed on the death of the previous owner in certain definite shares and therefore partition has ordinarily only the first sense viz. assigning to the coparceners specific portions of the property inherited. Another way of separating a member¹⁰⁴⁸ is also mentioned by *Manu* IX, 207 and *Yāj.* II, 116, viz. that when a member of the family is able to fare for himself and does not desire to have a share in the family property, he should be separated by giving him some trifle (as a token). The *Mit.* adds that the trifle is given as a piece of evidence to prevent his sons claiming a share later on.

The principal matters to be discussed under *Dāyabhāga* or *Dāyabhāga* are, as stated by the *Saṅgraha* and the *Mit.*, four, viz. the time of partition, the property liable to partition, the mode of partition and the persons entitled to partition¹⁰⁴⁹.

Time for partition. The evolution of the son's right to demand a partition has been a process of ages. It would not be out of place to say a few words on this topic here. In most primitive societies where the patriarchal family system prevailed, the father had absolute power over the son. It was the son's duty to obey the father, alienation of family property was not allowed, the father had power over the acquisitions of all persons including the son and women were incompetent to hold property. Faint traces of these can be detected in the Vedic literature. The legend of *Śunahṣepa* narrated in the *Ait. Br.* (33. 1 ff), where we are told that *Ajigarta* sold his son for being offered as a victim to *Varuṇa*, that *Viśvāmitra* adopted *Śunahṣepa* as his son, though he had already a hundred and one sons, and that he cursed and disinherited his fifty sons for their disobedience to

1048. शक्रस्यामीहमानस्य किञ्चिद्दत्त्वा पुष्कं क्रिया । वा. II, 116 on which the *Mitā.* says 'समुवादीनां दापयितुमा मा वृद्धिः', *सू.* II, p. 449 notes that *प्रकाश* explained वा. II, 116 and *सू.* IX, 207 differently (taking अमीहमानस्य as meaning 'who does not work though able to do so') 'प्रकाशकारस्तु यो भामिनु पयार्थं स्थापितेषु पमादालस्यादिना मेहेन न स्थापित सत्ताप्ये न कुपोतु स्वकर्मणा स्वभापारेण शक्रः सत्ताप्यकर्मणि क्षमोपि सन् स स्वकादृशस्तु स्वभापारजनितद्वन्नाहं प्रतिः कार्यः किञ्चिदुपजीवनं दत्त्वा मूलधनमाजन्तानाकस्त्रीय इति'. *अपराक* p. 719 gives both these meanings.

1049. पस्मिन्काले यथा भङ्ग्या धैर्यं क्रियतेपि च । पादशरणं च दापयन् यथाशास्त्रं पश्यते । संग्रह ५. by *स्मृतिच.* II, p. 253, *स. वि.* p. 349, इदमिह निरूपणीयम् । करिम्-
नकाले करणं कथं केच विभागः कर्तव्य इति । *मिता.* ५३ वा. II, 114.

his order, indicates that in the days of the Ait. Br. it was believed that in hoary ages long before it, the father's power over his sons was absolute. But a caution is necessary. It is possible to over-emphasize the legend of Śunahśepa; it has to be remembered that it is a mere legend and that the Ait. Br. itself shows that the conduct of Ajigarta was condemned as most unworthy of a decent man even according to the legend.¹⁰⁵⁰ In modern times there are rare instances where parents insure their children and then poison them or maim them for earning the insurance money. But no one says that this is usual or that modern law allows it. In Rg. I. 117. 17 it is stated that the eyes of Rjraśva were put out by his father because the former gave a hundred rams to a she-wolf. This is a solitary instance and it is probable that the verse has some esoteric meaning or refers to some terrestrial or celestial phenomenon. In the Kathaka Samhita XI. 4 it is said "the father rules over the son" (*pitā putrasyaśeṣa*). But it must be said that ideas about the father's absolute power over the sons lingered on in historic times. The Nir. (in III. 4) puts forward the argument of some predecessors that daughters did not succeed to the father's wealth because women could be donated, sold or abandoned and not men, while others said that males also were liable to the same treatment as evidenced by the story of Śunahśepa.¹⁰⁵¹ Vasistha (XV. 2) states that¹⁰⁵² father and mother have power to make a gift or sale of the son or to abandon him. We saw above (n 1035) that Manu stated that a son's earnings belonged to his father. The Āp. Dh. 8. (II. 6. 13. 10-11) emphatically says that the right to give away or sell one's child is not recognized and that the word "sale" used in connection with a bride is used only metaphorically. About the word "sale" in relation to marriage vide H. of Dh. vol. II. pp. 503-506.

On the other hand even in the Rg. we find that sons divided the father's property during his lifetime when the father grew old. "O Agni! men worship you in many places in various ways; they take (from you) wealth as from an aged father"

1050. स होवाच क्षुनःशेपी यः सकृत्प्रापके कुर्वाणकुर्वेद्विनस्तोऽपरम् । नापामाः
श्रोत्रान्प्रापादस्तन्धेरे त्वया कृतमिति । ऐ. आ. 33. 5.

1051. स्त्रीणां दानविक्रयानि सर्वा विद्यन्ते न पुंसः । पुंसोपि पितृके स्त्रीकक्षेपे दर्शनात्
निबन्ध III. 4.

1052. तस्य (पुरुषस्य) दानविक्रयत्वात्तु नावपि तसौ प्रभवतः । वसिष्ठ 15. 2; दान
क्रयधर्मोच्चापस्य न विद्यते । आप. ध. सू. II. 6. 13. 10.

(Rg. I. 70. 5).¹⁰⁵³ In the Ait. Br. (22. 9) the story of Nābhānedistha¹⁰⁵⁴, the youngest son of Manu, shows that the elder brothers divided all the father's property among themselves, and excluded Nābhānedistha during the father's lifetime apparently without any protest from him or in spite of it. In the Tai. S. III. 1. 9. 4-5¹⁰⁵⁵ the version of the same story is different, since it is there said that Manu himself divided his wealth among his sons and did not give any share of the paternal wealth to Nābhānedistha who was away at a teacher's house as a vedic student. In the Gopatha Brāhmaṇa (IV. 17) it is said "therefore in their childhood sons subsist on their father, while in his advancing years the father subsists on the son". In the Śat.¹⁰⁵⁶ Br. (S. B. E. vol. 44, p. 157) we read "whence in early life the sons subsist on the father...whence in later life, the father subsists on his sons". In the Kauṣītaki Br. Upaniṣad (II. 15) after describing the symbolical handing over to the son of all his physical and mental powers by a father who is expecting death it is said that if after this rite the father recovers he has either to remain under the son's dominion or go out as a wanderer (a *śamyāsīn*).¹⁰⁵⁷ From some of the above passages, it appears that in rare cases sons divided paternal wealth even during the lifetime of the father and against his will. The remark of Dr. Jolly that "it may be unhesitatingly set down as a fact that in the earliest period of Indian Law, partition of property was an entirely unknown proceeding" (Tagore Law Lectures p. 90) goes too far and is not fully warranted by Vedic texts. Just as the Tai. S. (III. 1. 9. 4)¹⁰⁵⁸ narrates that Manu distributed his wealth among his sons, it also speaks of the eldest son being established with ancestral

1053. नि त्वा नरः पुत्राः सपर्यन्तपुत्रं जितेति वेद्यो भरतः । ऋ. I. 70. 5.

1054. नाभावेदिष्ठं संसति नाभावेदिष्ठं वै मानवं ब्रह्मचर्यं वसन्तं ब्रह्मरो निरभजत् सोऽब्रवीत्स किं मह्यमभाक्तेवेतमेव निष्ठाभमवदितारमित्यब्रवीत्समाध्यायेतर्हि पितरे यथा निष्ठार्थोऽवदितेतेषाचक्षते स पितरित्याब्रवीत्सं वाच मध्ये तनामाधुयति तं पिताब्रवीन्मा पुत्रक तदाधुयाः &c. । तै. ब्रा. 22. 9 (V. 14).

1055. मनुः पुत्रेभ्यो द्वापैः अभजत्स नाभावेदिष्ठं ब्रह्मचर्यं वसन्तं निरभजत् सोऽब्रवीत्स यथा निरभजति न त्वा निरभाहमित्यब्रवीत् । तै. सं. III. 1. 9. 4.

1056. तस्मात्पूर्वपक्षे पुत्राः पितरभ्युपजीवन्ति । ...तस्मात्पुत्ररक्षणे पुत्रगोपितोपजीवते । शतपथ XII. 2. 3. 4.

1057. स यद्यमृतः स्यात्पुत्ररक्षैश्वर्यं पिता वसोपरि वा ज्ञेयः । कौ. उप. II. 13.

1058. ब्रह्मपादिनो वदन्ति किंदेशवं धीर्जनासमिति भाषापरमिति ब्रूषासेमेष्टं ज्ञेयं पुत्रे निरवसापयति तस्माज्ज्येष्ठं पुत्रं धनेन निरवसापयति । तै. सं. II. 5. 2. 7.

wealth. The Āp. Dh. S. (II. 6. 14. 6 and 10-12) refers to both these passages of the Tai. S. but concludes that equal division among sons is the proper mode and that giving a major part of the estate to the eldest alone is forbidden by the *sāstras*¹⁰⁵⁹. These lead to the conclusion that equal distribution among all sons was believed to be the rule and giving the major portion to the eldest son was an exception (and a rare case) even in the Vedic age. The Ait. Br. (19.3) speaks of the right¹⁰⁶⁰ of Indra to primogeniture (*jyaisthya*) and pre-eminence (*śraisthya*). This right of the eldest son to special treatment at the time of partition persisted in the times of Manu (IX. 112 ff) and Yāj. (II. 114) also and even in modern times it is recognized to some extent in the case of impartible estates and even in ordinary families on the ground of custom or from the nature of the grants made by the former Governments or the British Government (such as Jaghirs and Saranjams). Both Kauṭ. and Kāt. declare that customs of countries, castes, villages and groups varying rules of partition and inheritance should be enforced by the king¹⁰⁶¹. Dr. Jolly (ibid. p. 98) further relies on the fact that the Āpastamba-dharmaśāstra mentions no other kind of partition than that made by the father. But this is far from conclusive. Āpastamba was a great purist and idealist. He ignores several matters which are wellknown to have existed long before his time. For example, he takes no notice of the several kinds of secondary sons and he does not allow a brāhmana to take up a weapon even for examining it except when he is murderously attacked (I. 10. 29. 7-8), while Manu (VIII. 345-349), Gautama VII. 6 and 25 and others allow a brāhmana much greater latitude. Therefore Āpastamba's silence cannot lead to the positive conclusion of the absence of any other method of partition. As a matter of fact, Gautama (15. 19) who is generally regarded as prior to Āpastamba states that brāhmanas that had separated from their fathers against the latter's will were not fit to be

1059. एवेतो दावाद् इत्येकः । ... तच्छास्त्रे विहितमिदम् । मनुः एवेभ्यो दापं चमज-
दित्यभिधीयते श्रुतेः । अथापि तस्माज्जघेर्त्तुं पुत्रं धमेन निरसतावप्येकवचनमुच्यते । आप. ध.
सू. II. 6. 14. 6, 10-12.

1060. सोऽजकीद् वृक्षस्यति याजय मा हादृशाहमेति समयाजयत्तो वै तस्मै देवा
एवेदंदाय भेददायातिष्ठन्त । ये. ब्रा. 12. 3.

1061. देशस्य जात्या सङ्घस्य धर्मो ज्ञातव्यः नापि यः । उचिततत्पर्य तेनैव दावधर्मं
महावचने * अर्पेदाद्य III. 7 (last verse); जातया q. by वि. र. p. 505 reads
देशस्य ... ज्ञातव्यो यः श्रुतः । उचितः स्यात्स तेनैव दावधर्मं प्र.

invited for dinner at a *śrāddha*.¹⁰⁶² That shows that partition of sons from the father against the father's will was wellknown long before Gautama. Dr. Jolly also (ibid p. 90) relies on an anonymous *smṛti* text (quoted by the Mit. in its introduction to Yaj. II 114) which absolutely prohibits the sale of land. But this is irrelevant. The text could not be taken literally when we have seen that sales of land have been taking place for at least two thousand years. All that the text means is that a sale should be clothed in the form of a gift.¹⁰⁶³ Similarly the few *smṛti* passages that include lands and houses among indivisible properties are to be explained as having in view the fragmentation of a field into small uneconomic plots or holdings or the division of a single small house among numerous co-sharers. It is impossible to believe that the texts meant that houses could never be partitioned among co-heirs. All that we can reasonably infer is that as a general rule such partitions were looked upon with disfavour by society. One may concede that this sentiment continued long after even Gautama and Apastamba and even in the 20th century a Hindu son suing his father for partition incurs great opprobrium.

Apart from the inference to be drawn from some of the Vedic passages quoted above, it follows that partition did take place, though probably rarely, during the father's lifetime and even against his will, as indicated by Gautama's dictum. It is now to be seen what the *smṛtis* and the medieval writers say about the time of partition. One time was when the father divided the property among his sons during his lifetime as evidenced by the Tai. S. III. 1. 9. 4, Ap. Dh. S. II 6. 14. 1, Gaut. 28.2, Band. Dh.S. II 2.8, Yaj. II 114, Nār. dāyabhāga 4. Another time was after the death of the father (Gaut. 28. 1, Manu IX. 104, Yaj. II. 117, Nār. dāyabhāga 5). The *Dāyabhāga*¹⁰⁶⁴ admits only these two times for partition viz. on the cessation of the father's

1062. न भोजयेत् ... पित्रा वाकामेन विभक्त्या । मी. 15. 13 and 19.

1063. हिरण्योदकदानेनेति स्थापरे विक्रयो नास्ति कुप्याभिमुख्यं इति स्थावरस्य विक्रयनिषेधात् 'भूमि यः यतिगृहाति पञ्च भूमि यच्छति । उभौ तौ पुण्यकार्मणौ निवर्त स्वर्गामिनौ' इति दानपत्रसादृशमाह । विक्रयेपि कर्तव्ये सहिरण्यमुदके दत्त्वा दानरूपेण स्थावरविक्रयं कुप्यादिवर्धः । मिता. on वा. II. 114. The *Dāyabhāga* quotes this view of the *mitakshara* and remarks 'वरतुतस्तु स्थावरविक्रयनिषेधोऽविभक्त्यध्यावरविषयः ।' Vide n. 882 above.

1064. तदेवं पितृस्वत्वापगतम एकः कालोऽपरस्त्वापगत एव पितुः स्वाम्ये पितुस्त्विच्छेदेति कालद्वयम् । द्वापभाग 1. 38 ; तस्यापतितत्वनिस्यूहयोपरमेः स्वात्वापगत इत्येकः कालोऽपरस्व सति स्वमे तदेच्छात इति कालद्वयमेव दुक्तम् ॥ द्वापभाग 1. 44.

ownership (by death or renunciation of the world as an ascetic or because he has lost all desires) and during the father's lifetime at his own desire. The V. P. (pp. 429 and 434, 435) strongly criticizes the Dāyabhāga as to these two. Some writers like Jimūtavāhana went so far as to hold that even though the father be dead there should be no partition among the sons during their mother's life¹⁰⁶⁵. The Mit. (following Gaut. 28. 1-2) indicates three principal times for partition,¹⁰⁶⁶ viz. (1) at the father's desire during his lifetime, (2) when the father has lost all desire for worldly goods, desists from sexual intercourse and the mother is past the age of child-bearing, partition may take place at the desire of the sons even against the wish of the father (Gaut. 28. 2, Nār. dāyabhāga 3, Br. S. B. E. 33 p. 369 verse 1); (3) after the death of the father. The Mit. relying on Sāṅkha's¹⁰⁶⁷ text adds that even though the mother may not be past child-bearing, yet the sons can partition at

1065. पित्रोरिति द्विवचननिर्देशात्सोदरभ्रातृणां पितृव्यविभागोऽपि मातुरन्वय एव कार्यः । द्वायभाग II. 5. p. 27. श्रीकृष्ण was constrained to explain कार्यः as वञ्चनः thereby showing that this was only recommendatory. V. P. (p. 436) strongly criticizes this view of the Dāyabhāga pointing out that Manu IX. 104 mentions the father and mother separately and indicates that partition of mother's wealth takes place after her death. Vide द्वायभाग III. 9, p. 60 also 'अत एकस्मिन्कपि जीवति विभागो न धर्मः किन्तु उभयोरभावे' । The द्वायभाग also (p. 170) says मातरि जीवन्तया सोदराणां विभागो न धर्मः । यथा शकुन्तलिकितौ रिषधमूलं हि कुतुम्बमस्तम्बाः पितृमन्यो मातुरप्येतन्नगरियातायाः ।

1066. निवृत्ते रक्षति मातुर्जीवति चेच्छति । मी. 28. 2 (this refers to two times) ; मातुर्निवृत्ते रक्षति मत्सह भगिनीषु च । निवृत्ते चापि रमणे पितृद्वयस्तुते ॥ नारद (द्वायभाग 3). This verse is variously read and explained by the commentators. V. R. (p. 462) notes that Prabhāsa read either निरपेक्षे च रमणे or निरले चापि रमणे. The Dāyabhāga (I. 31-33 p. 18) reads विनष्टे वाप्यशरणे and explains विनष्टे पतिते अशरणे दुष्टाभावनरहिते. The स्प. य. (p. 433) reads निवृत्ते चापि रमणात् and हस्तादुच also read it so (V. R. p. 462). The द्वायभाग (I. 47, p. 24) says दत्तासु भगिनीषु चेति न कादापि किं तु तासामवश्यं द्वायार्थम्.

1067. यथाह शङ्खः अकामे पितरि रिषधविभागो ब्रूते विपरीतचेतसि रोमिणि च । मित्ता. on pa. II. 114, मदनरत्न, पितर्यहाके स्पष्टाहाराङ्गपेठः यतिकुर्यादन्तरौ वा कार्यज्ञस्तदनुमतौ न त्वकामे पितरि रिषधविभागो ब्रूते विपरीतचेतसि दीपिरोमिणि वा उभे एव पितृवद्वधत्वात् पालने-द्वितरेषां रिषधमूलं हि कुतुम्बमस्तम्बाः पितृमन्यो मातुरप्येतन्नगरियातायाः । द्वायभाग I. 42, p. 23 (q. as शकुन्तलिकितौ and adds अतो न त्वकामे पितरि इत्येतदेव कार्याश्रमे पितरि रिषधविभाग इति आन्तलिखितम्. It will thus be seen that the two schools read the passage of Sāṅkha-Likhitā differently. The स्प. मद्रूप (p. 60) omits the words कामे दीने &c. The मदनरत्न has the words कामे दीने ... चित्तमेतत्. The V. R. (p. 460) has the same passage of हारीश (as in the Dāyabhāga) with slight variations, viz. जीवति पितरि पुत्राणामर्थादानविसर्गविभागमाक्षेपेभ्यस्तन्मयं कामे दीने योचिते आति मते वा उपेक्षार्थाश्चिन्तयेत् । हारीश q. by द्वायभाग I. 42 p. 23.

their desire, even against the father's will if the father pursues an immoral or irreligious mode of life or is afflicted with a chronic disease or is very old. Nār. (dāyabhāga 16) is similar. It should not be supposed that the Mit. holds that there are only three times for partition; according to it there are other times also (as in the text of Śankha quoted by it). This is made clear by the V. P. p. 434. The Dāyabhāga reads the text of Śankha-Likhita differently and takes it to mean that as long as the father is alive there can be no partition against his will even if he be very old or suffering from a chronic disease or has not all his wits about him, and that in such a contingency the eldest son or with his consent the next younger brother who is capable may manage the family affairs. The Dāyabhāga quotes a similar passage of Hārīta (which is also quoted by the Madanaratna, the Vyavahāramayūkha and other digests). On account of the remarks of the Mit. some works like the Madanapārijāta (pp. 645 ff) speak of four times for partition, viz. during the father's lifetime at his choice (Yāj. II. 114), even against his will when the mother is past child-bearing and the father is free from all sexual desires and does not care for wealth (Nār. dāyabhāga 3), when the father is old or follows the path of *adharma* or suffers from an incurable disease then even against his will (relying on Śankha as quoted in the Mit.), and after the father's death. The V. Nir. (p. 408) is almost of the same view.

The Mitākṣarā is quite clear on the point that the son has an absolute right of partition of ancestral property during his father's lifetime even against the father's wish. The discussion in the Mitākṣarā may be briefly set out here. In Yāj. II. 120 (latter half) it is stated that in the case of grandsons the partition is according to (or through) the fathers i. e. it is *per stirpes* and not *per capita*. The text of Yāj. (*anekapitṛkūṇām¹⁰⁶⁸ tu pitṛto bhūṅgakulpanā*) is explained by the Mitākṣarā in this way that although sons and grandsons have rights of ownership by birth in the grandfather's property, yet when each of several sons dies leaving a differing number of sons (one leaves two, another three and so on) or when some sons are alive and others die leaving their own sons, then partition takes place *per stirpes* i. e. the grandsons born of a particular deceased son

1068. It may be noted that the Bālabhāṭṭi (p. 150) and V. P. (p. 449) support the reading अनेकपितृकानां तु instead of अनेकपितृकानां नु in यज. II. 120.

get among themselves the share which their deceased father would have got if living i. e. grandsons appear to get partition of property through the son (their father) and not directly by themselves. On this a doubt arises as follows:—If the father of several sons is separated from his brothers as to the grandfather's property or if the father has no brother and is joint with his father (i. e. the grandfather of the grandson) the grandson cannot demand a share in the grandfather's wealth (since Yaj. II. 120 has been explained as meaning that when the father is dead then the assignment of shares among grandsons is according to the share of the father). Another doubt is:—even if a partition can be had by the grandsons in these cases it will be only if the father so desires. To this the Mit. replies emphatically¹⁰⁶⁹ that in the grandfather's property the ownership of father and son is wellknown in the world and therefore partition (in the above two cases of doubt) does take place. The Mit. further on expressly says that even when the mother is not past child-bearing and the father still cares for wealth and worldly affairs, partition of grandfather's wealth does take place at the desire of the son even if the father is unwilling. The Mit. makes it clear that the rule of division *per stirpes* is a special rule laid down by the texts (*vācaniki vyavasthā*) for a special case and that in other cases the primary rule of ownership by birth applies. From Manu IX. 209 the Mitākṣarā further draws the inference that even against the father's wish a son can demand partition of property acquired by the grandfather. This is the modern Hindu Law in the Mitākṣarā school generally recognised by the Courts in British India. In *Apxi Narhar*¹⁰⁷⁰ v. *Ramchandra* a majority of the Full Bench of the

1069. नृदानामपि पुत्राः पित्रानेवंशाहभन्त इति वाचनिकी व्यवस्था । अपुत्रा विभक्तं पितर्यधिकृतमात्रातुके वा पौत्रस्य पत्न्याहं इत्येव विभागो नास्ति अतिविभागे पित्ररि पितुको भाग-
कल्पनेत्युक्तत्वात् । अन्तु वा स्थापितवत् पितुरेवैवैवासाङ्गिते आह । पुत्रो पितः (पाञ्च.
II. 122) ... तत्र पितुः पुत्रस्य च स्वाम्यं लोकप्रसिद्धमिति कृत्वा विभागोऽस्ति ।
तस्माच्च पितुरेवैव विभागो नापि पितुर्भाण्डवत् । ... तथा च सरजस्कायां मातरि ससृष्टे
च पितरि विभागमनिरुद्धत्वापि पुत्रेच्छया पैतामहद्वयविभागो भवति । मित. The
वादमहती (pp. 151-152, of Gharpure's edition) very clearly explains this passage.
The वद. प. (p. 460) also says अत्र च पुत्रेच्छया नो जीवद्विभागो पश्चाज्जीवद्विभागः स पौ-
त्रेच्छयापि भवत्येवैवैवात् । ... अथ च पुत्राणां विभागः पुत्रपौत्रपौत्रपर्यन्तः समो नात्रोपस्थितः
आयामनिक्रमेणाधिकारकतः । पुत्रादीनां वदानामेव पार्ष्णे पित्रवदानाधिकारात् । विदे
स्पृतिच. II. p. 279 for a similar passage.

1070. Vide 15 Bom. 29, where Telang J., who was great as a Sanskrit scholar as well as a judge, differed from three learned judges. On pp. 43-51 Telang J. gives a very lucid explanation of the words of the Mit.

Bombay High Court held that a son cannot in the lifetime of his father sue his father and uncles for a partition of the family property and for possession of his share therein, when the father does not assent to such a suit, although the son has a right by birth in ancestral property. The other High Courts have dissented from this view of the majority of the Bombay Full Bench and have followed the dissenting judgment of Telang J.¹⁰⁷¹

When the son's right of ownership by birth in ancestral property came to be recognised by such *smṛtis* as that of Yāj., it followed as a logical consequence that any person who acquires a right by birth can demand partition and separate possession of his share at any time. It has been already seen that even before Gautama sons separated from their father against his will, but this was condemned by the sages and obloquy and infamy attached to such conduct. Some of the *smṛtis* recognised the son's right to partition even in the father's lifetime under great restrictions. More than fifteen centuries passed (from Gautama to the *Mitākṣarā*) before the son's right to separate from his father during the latter's lifetime and against his desire was clearly, ungrudgingly and emphatically recognized. The *Vṛamitrodaya* also clearly recognizes this right of the son. But even among writers that generally follow the *Mit.* there were some that could not bring themselves to admit this right of the son. For example, the *Madanapārijāta* (p. 562) asserts that merely at the will of the son there can be no partition. Under the *Dayabhāga*, these questions cannot arise, as the son has no right by birth in ancestral property.

This evolution of the son's right to demand partition even during the father's lifetime received a fillip from certain religious sentiments entertained in ancient times. Gaut. (28. 4) remarks that if, instead of remaining united, brothers separate there is increase of spiritual merit (*vibhāge tu dharmavṛddhā*). Manu IX. 111 states "they (the brothers) may stay united or may stay separate if they desire an increase of *dharmā*; by living separate *dharmā* increases; therefore separation is meritorious".¹⁰⁷²

1071. Vide *Jogul Kishore v. Shib Sahas* 5 All. 430 (F. B.), *Rameshwar v. Lachmi* 31 Cal. 111, *Subba v. Ganas*, 18 Mad. 179, *Digambar v. Dhanraj* 1 Pains 361.

1072. मनु IX. 111 is quoted as भ्रातृपतिः by एच. वि. प. 408. The *मदनमाला* regards मनु and यज्ञवल्कि as different 'पृथग्वैतविष्णुकर्मकरणद्वयमिदं यज्ञमात्रा विभजेदुक्तिवत्तदुक्तमुज्जापती एव सव चसेत्तुर्वा' etc.,

This shows that there was an option either to remain joint after the father's death or to become separate. Sankha-Likhita say that brothers may stay together since being united they will prosper (materially).¹⁰⁷³ Br. provides that in the case of members of a joint family that live together and have a common kitchen the worship of gods, Manes and brāhmanas is single for all, while when they become separate such worship will be separately carried on in each house.¹⁰⁷⁴ Nār. (dayabhāga 37) lays down that when brothers are undivided the performance of religious acts is single for all of them but when there is a partition, the religious acts are separately performed by each. Dharma means here mainly such religious acts as the performance¹⁰⁷⁵ of the five great daily sacrifices (*pañca mahājñānas*). When the family is joint, worship of gods, Vaiśvadeva, honouring of family guests are only single for the whole family and all participate in the spiritual benefits derived from such acts, but when the members become separate, each performs these religious acts separately. Manu III. 67 lays down that each householder has to perform with the *grihya* fire kindled at the time of marriage all *grihya* rites such as morning and evening offerings, the five great sacrifices and the daily cooking of food. The Saṅgraha seems to have held that *dharma* refers to the performance of *agnihotra*, but the Sm. C. II p. 259 and V. P. (437-438) do not accept this and hold that even when joint any coparcener can perform all *śrauta* and *smārta* rites like *agnihotra* with the help of the undivided joint estate and so *dharma* means only the worship of gods and Manes and the honouring of guests. Vyāsa¹⁰⁷⁶ also has a verse similar to Nār. and Br.

1073. कामे वसेपुरेकतः संघता वृद्धिमाचक्षीरन् । शङ्खलिखितौ 10 सि. र. p. 458. The *Madhvaran* reads सह वसेयुः and आपश्रेयम्.

1074. एकपाकेन वसतां पितृदेवहिजाचनम् । एके भवेद्विभक्तानां सदेव श्पात्रं पृष्टे पृष्टे ॥ बृह. q. by अपराह p. 719, व्यव. नि. p. 468, कुल्लुक on मनु IX. III, हरद्वज on सी. 28. 4, सि. र. p. 459.

1075. अधीतवेदेषु अधिमानवेदायेषु चाग्निहोत्रायसुदानसमर्थेषु च विनाश एव श्रेयम् । अपराह p. 719; धर्मः पितृदेवहिजाचनम् । उक्तं च तत्रैव संग्रहाकारेण । विधिते स्ते विभागेन पुत्राणां वैतुर्धनम् । स्वप्ने सति यवर्तन्ते तस्माद्भूम्याः पुत्रकृत् क्रियाः ॥ मार्तले स्व-साध्याग्निहोत्रादय इति शेषः । अधोपपत्ते 82. । स्मृतिच. III. p. 259; तस्मात्पञ्चमहा-पञ्चादिधर्मै एव धर्मशब्देनात्र ग्राह्यः । व्य. म. p. 438; स्वभावितेषां देवाविभक्त्यपेक्षेण यत्कुले तत्र दद्यादहो कर्मणि सर्वेषां कलभागित्वम् । द्वापतत्र p. 164.

1076. आहूयां जीवतोः पित्रोः सहवासो विधीयते । तदभावे विभक्तानां धर्मश्लेषो विधीयते ॥ व्यास q. by अपराह p. 719, व्यव. नि. p. 469, द्वापमान III. 8.

Partition was generally made when all the coparceners were major,¹⁰⁷⁷ but from Kaut. (III. 5), Baud. Dh. S. (II. 2. 42) and Kat. (844-45) it appears that the minority of a coparcener did not operate as a bar to partition. Kaut. (III. 5) says 'partition takes place when the persons separating have attained majority; but (the separating coparceners) should keep in the custody of the mother's relatives or those coparceners who are minors or of the elders of the village the share of the minors after all debts of the family are paid off, till the minor coparceners attain majority. The same rule applies to a member (of a joint family) that has gone abroad'. Baud. employs almost the same words. Kat. provides "partition is ordained among coparceners who have attained (years of) understanding of worldly affairs and in the case of males they attain this understanding at the 16th year. The property (share in joint family estate) of those who have not attained years of discretion, being made free from expenses (debts etc.), should be kept (by the other major coparceners) with the relatives or friends of the minor members. The same should be done to the share of those who have gone abroad." This shows that partition could take place even when some members of the family were minors and even a single member could demand at his will a partition of his share as expressly stated by the Dayabhāga (III. 16-17), the V. P. and other works¹⁰⁷⁸. There is a controversy among commentators whether minority terminated at the beginning or end of the 16th year. Nār. IV. 35 states¹⁰⁷⁹ that a person is a minor (*bāla*) till the 16th year. From a verse (attributed to Angīras by Mīt. on Yāj. III. 243 and quoted without name by Haradatta on Gaut. II. 6) it appears that one was to be regarded as a *bāla* till

1077. मातृपक्षकारणा विभागः । अमातृपक्षकारणा द्वेषविशुद्धं मातृपक्षेषु धामद्वयेषु वा स्थायवेपुरातनकारणमापन्नात् । मोक्षितस्य वा । अर्थशास्त्र III. 5; तेषाममातृपक्षकारणानामज्ञानं सोपचक्षानं सुस्थितुमास्तिदुःसुराभ्यकारणमापन्नात् । बी. ध. II. 2. 42; सेनातृपक्षकारणा विभागश्च निर्धीयते । पुंसां च षोडशे वर्षे जायते स्ववहासिताः । अमातृपक्षकारणां च पुंसे स्वव-
विश्रितम् । स्पष्टेयुर्वर्णमित्रेषु मोक्षितानां तथैव च । कात्या. 844-845 q; by अपराक p. 722, द्वापमान (III. 17 p. 72) and अ. म. p. 460 (last two have verse 845 only). The *विवादचन्द्र* (p. 63) quotes the verse सेनातृ for the proposition that there is to be no partition with a minor 'बालिनं समं न विभागः सेनातृ इति वचनात्'.

1078. अथ च पुत्रेष्टया यो जीवद्विभागो यश्चाजीवद्विभागः स एकेष्टयापि भक्ष्य-
विशेषात् । अत एव विभागं यत्रापि यत्कारणायनेत्येकं — अमातृ, इति तदपि सङ्गतम् ।
अथवा तदनुसन्धिमन्तरेण विभागाभावे तद्वनस्य वस्तुनिष्ठेषु स्वातन्त्र्यविधानमनुपपन्नं स्यात् ।
अ. म. p. 460.

1079. बाल इव षोडशावर्षावलोप्यन्त इति आस्यते । नारद (अजादाव 35),

the beginning of the 16th year.¹⁰⁸⁰ A verse of Kat. appears to hold that minority ends at the beginning of the 16th year; many commentators also hold this view, but several such as Haradatta (on Gaut. X. 48), V. R. p. 599, V. P. p. 263 expressly state that minority ends at the end of the 16th year.¹⁰⁸¹ It may be stated that according to Gaut. X. 48-49, Manu VIII. 27, Vas. 16. 8, Visnu Dh. S. III. 65 the king was to guard the property of minors, women and helpless people. In modern times under the Indian Majority Act (Act IX of 1875) the age of majority is 18 (or 21 in certain cases only) except in matters of marriage, dower, divorce and adoption. In these last matters the ancient Hindu Law will apply to Hindus^{1081a}. Similarly a partition could be made even though the wife of a coparcener was pregnant. It was therefore that Vas. 17. 41 advised postponing partition till the delivery of the pregnant wives of coparceners, or Yāj. II. 122 and Manu IX. 216 provide for a son born after partition between father and sons.

The next question is what property is liable to be partitioned. A few preliminary remarks on property must be made here. Property is generally divided by most smṛtis into two kinds, *sthāvara* (immovable, such as lands and houses) and *jaṅgama* (movable). For example, Br. (S. B. E. vol. 33 p. 323 verse 17) and Kat. (516) speak of both kinds of property as subjects of pledges or mortgages. There is another classification in Yāj. II. 121 and a few other smṛtis viz. property is of three kinds.

1080. अतीतिर्यस्य तर्थाणि बालो वारपूर्वबोधः । नापश्चित्तार्थमर्हन्ति क्षिप्रं सोमिथ एव च । इत्यङ्गिरसस्मरणात् । मिता. on वा. III. 243.

1081. पाण्डुसौ व्यवहारमात्रं बोधोऽवश्यं भवति । इत्यङ्गिरसः on श्रौ. X. 48; पुत्राधिकारे बोधायनः तेषामन्तस्तत्त्वकाराणां । आह अभिविधौ तेन समुद्रज्ञानव्याहः । वि. १. p. 599: कात्यायनोपि । ... नाभास्तत्त्वकारैस्तु- । इति । नाभास्तत्त्वकारैः हेतोपादेयपरिज्ञानविशेष-साक्षितैः बोधोऽवश्यं भवति । बोधोऽवश्यं व्यवहारज्ञानमाह । गर्भरथैः &c. (नारद IV. 33.) । पञ्च. प. p. 263.

1081a. In Bengal minority was held to terminate at the end of the 15th year; vide *Cally Churn v. Bhuggobutty* 10 Bengal L. R. 231 (F. B.) at p. 240 and *Mochoormohun v. Sourendro* 1 Cal. 108 (F. B.). In Bombay and Madras it has been held to terminate at the end of the 16th year; vide *Shivaji v. Datu* 12 Bom. H. C. R. 261, *Reade v. Krishna* 9 Mad. 391, 397. But see 40 Mad. 923, 929. As the Indian Majority Act does not apply to adoption, it was held in *Rasappa, v. Sidramappa* 43 Bom. 481 that a Hindu widow who was about 15 years old could validly adopt a son, even though a contract by her would have been void on the ground of minority.

bhū (land including houses), *nibandha*¹⁰⁸² (inaccurately rendered as 'corrody') and *dravya* (gold, silver and other movables). Sometimes however the word "dravya" is employed in the sense of all property, whether movable or immovable, as in Br. (*dravya pīlāmahopātte jāgama sthāve tathā*) quoted in note 1032 above. Property, according to ancient Hindu Law,

1082. द्रव्यं वृत्तिं निबन्धं वा कृत्वा देयं तु कारयेत् । आगमिनश्चतुर्विधविज्ञानाय पाणिनः ॥ याज्ञ. I. 318. The *vy.* *mayukh* p. 27 states that it occurs in *vy.* also. In *kaust.* (882) we have उदकं चैव दासश्च निबन्धो यः क्रमागतः (q. by *avarak* p. 725, *iv.* r. p. 504). 'निबन्धो वाणिज्यादिकारिभिः प्रतिवर्षं यत्किमासे वा किञ्चिद्गमने जाह्नवाचार्ये देवतायै वा देयमित्यादि प्रसूतमपत्तयोऽर्थः । स्तुतिच. II. p. 55; निबन्धः आकरादी राजादिदत्तं नियततन्मयः । *vy.* *mayukh* p. 28 and दीपकालिका (reading नियततन्मयः), *दायतल* p. 166 states that this was the explanation given by *कल्पतरु*. निबन्धो राजाधिकार्यैकस्मिन् वर्षेभरककुसुमरकादुत्पिबन्ति पश्चाद्विनि देवाभीति क्षासनरूपतया यद् दृष्टिरेव दीपते तदुच्यते । *vy.* p. 445.

The word "nibandha" means a periodic payment or allowance in cash or kind permanently granted by a king, a corporation or a village or a caste to a person, a family, a *math* or a temple. The *Mit.* (on Yāj. I. 318 and II. 121) explains it as a delivery or payment of so many leaves (of betel or the like) on each bundle of leaves or so many rupees on each load of merchandise or so many betelnuts on each load of betelnuts; the *Sm. C.* explains it as the wealth to be obtained under the order or direction of a king or other authority that dealers in commodities should pay every year or month a certain amount to a certain brāhmaṇa or shrine; the *V. Mayūkha* (p. 28) explains "what is granted by a king or the like, to be obtained at fixed times from mines and the like" and on p. 131 paraphrases it as "vrtti". *Nibandha* is rendered as corrody by Colebrooke in his *Digest*, but as observed by the Privy Council in *Fatehsangji v. Deval Kallianraji* L. R. 1. I. A. 34 at p. 51 it is not a very happy rendering. In *Ghelaibhai v. Hargovan* 36 Bom. 94 (at p. 101) the explanation of *nibandha* by the *V. Mayūkha* is construed as conveying that it is not the king alone who can make a grant of a *nibandha* and it is held that the office of a hereditary priest (*yajamāna-vrtti*) is a *nibandha* and rank as immovable property. Bombay Regulation V of 1827, section 1, clause 1 includes hereditary offices among immovable property. Vide *Collector of Thana v. Krishnanath* 5 Bom. 322 at pp. 331-32 (for a discussion of what is included in *nibandha*), *Collector of Thana v. Hari* 6 Bom. 346 (F. B.) at pp. 555-559, *Lakshmandas v. Manohar* 10 Bom. 149, *Jatindra Mohan v. Ghanashyama* 50 Cal. 266 at p. 271 (for various definitions of *nibandha* and for the view that an annuity in favour of the settlor's daughter for her life and then to her son charged on and payable out of the settlor's estate was a *nibandha*). With *Vijñāneśvara's* examples of *nibandha* one may compare an inscription of *śaka* 1088 (1167 A. D.) from the Ron Taluka of Dbarwar District in E. I. vol. 20 p. 109 at p. 121 ("the income granted by the dealers in betel leaves; a hundred leaves for one cart load, a hundred for a bullock load, fifty for a man's load").

A person while he is a member of a joint Hindu family under the Mit. and has an interest in joint family property may have separate property of his own acquired in various ways. The different sources of ownership have been already mentioned above (pp. 317 and 548). The different kinds of separate property are mainly these: (1) property taken as obstructed heritage, that is, property inherited from any person other than the father, father's father or father's father's father (such as a brother, uncle etc.)¹⁰⁸⁵; (2) a gift of a small portion of ancestral movable property made through affection by the father to his issue (smṛti quoted by Mit.)¹⁰⁸⁶; (3) gift or bequest of separate property made by the father¹⁰⁸⁷ to his sons; (4) gifts and bequests made by other relations and friends and gifts at the time of marriage; (5) ancestral property lost to the family and recovered from a stranger by a member of a joint family with his own efforts without assistance from joint family property; (6) separate earnings and gains of learning or science (*vidyādhana*). A few remarks will be made on some of these in the sequel.

It is a remarkable fact that the smṛti texts on separate property do not expressly mention gifts received from strangers by a member of a joint family as the separate property of that particular member. The only gifts mentioned are those from friends, or those received at the time of marriage (called *audhāhika* in Yāj. II. 118 and Manu IX 206) or at a *madhugarka* in

1085. A decision of the P. C. from Madras held that property inherited by two brothers living as members of a joint family from their maternal grandfather became joint property in their hands with rights of suretyship. Vide *Venkoyyamm v. Venkataramanayamma* L. R. 29 I. A. 156. See 27 Mad. 300 (F. B.) and 29 All. 667 for the difficulties caused by L. R. 29 I. A. 156. But it may be taken that even in Madras such property inherited from the maternal grandfather will now be held to be the separate property of the two brothers. Vide *Muhammad Husain Khan v. Kishor Nandan Sahai* L. R. 64 I. A. 350 which explains away (on pp. 264-265) the case of L. R. 29 I. A. 156.

1086. और्वभार्याधने श्रीमे दत्त विद्याधने भवेत् । और्वेताम्पविभार्यानि प्रसादो यश्च पेतुः ॥ ५. by मित्रा, in intro. to रा. II. 114; स्पृ. नि. प. 443, नि. र. प. 501 ascribe it to Nārada (it is भारद्वाज, द्वापभाष्य ७).

1087. In Bombay, Allahabad and Oudh such gifts by the father of his separate property are held to be separate property of the son or sons. Vide *Jugmohandas v. Sir Mangaldas* 10 Bom. 528, 579. But in Calcutta they are held to be ancestral (*Hazari Mall v. Abaninath* 17 C. W. N. 280) and in Madras it is a question of intention (*Nagalingam v. Ramchandra* 24 Mad. 429.)

honour of a learned man, a priest etc. It is probable that gifts from strangers to a member of the joint family that did not fall within the several classes of separate property mentioned above belonged to the whole family. The concept of the separate property of a member of a joint family was of slow growth. Originally all property however acquired by any member might have been held to belong to the whole family. This is indicated to some extent by *Mam* VIII. 416, which was (as shown above on pp. 555-556) however interpreted by *Sabara*, *Medhātithi*, the *Dāyabhāga* and others in subsequent times, as meaning that the acquirer (son or wife) had no independent power of disposal though he or she was owner of what was earned by him or her. It is noticeable that so late a writer as *Haradatta*¹⁰⁸⁸ relies on this verse of *Mam* and remarks that while the father is alive whatever is earned by a member, whether learned or not, belongs to the father (on *Gaut.* 28. 29). The *Dāyabhāga*¹⁰⁸⁹ (II 66-72) quotes a text of *Kāt.* (851) "the father gets two shares or half of the wealth acquired by the son" and explains it in two ways. If the son acquires wealth with the help of ancestral funds, the father takes half of it, the acquirer gets two shares and the other sons one share each; if the son acquires wealth without using ancestral funds, the father and acquirer take two shares each and the others take nothing. Another meaning is that if the father is learned he takes half, but if he is not so, he takes only two shares. The V. P. (pp. 444-45) severely criticizes the *Dāyabhāga* for these remarks. The first inroad on the conception that the earnings of all in the family belonged to the head of the family was made in the times of the *sūtras* by the recognition of *vidyūdhana* as separate property. *Mam*¹⁰⁹⁰ IX. 208 (= *Viṣṇu Dh.* S. 18. 42) states that what one (member of a joint family, a brother etc.) may acquire by his own labour without using (or without detriment to) paternal estate he shall

1088. तत्र सूत्रद्वयमपि चैतद् आनुविषयमेव । पितरि तु जीवति ... विदुषाविदुषा वाऽ-
विभक्तैर्जातं पितुरेव । भार्या पुत्रश्च ... तद्वन्नन् इति मङ्गः । हरदत्त on यो. 28. 29.

1089. तथा पुत्राजितेति धने पितुरंशद्वयं द्वावंशाविति सूत्रमिदंशद्वयमिति चाविशेषभुक्तेः ।
सुव्यक्तमाह कात्यायनः । स्व्यंशहरोर्ध्वरे वा पुत्रविचार्यमात्रं पिता । मातापि पितरि भेदे
पुत्रतुल्यांशभागिनी । ... तत्र पितृद्वयप्राप्तयेन पुत्राजितोविशेषार्थं पितुरंशद्वयं पुत्रस्या-
ंशद्वयमितरेषामेकैकांशित्वा । अष्टपक्षे तु पितुरंशद्वयमर्जकरवापि तावदेव द्वितरेषामर्जशेषम् ।
यद्वा विद्याविदुषासम्पन्नश्च पितुरंशद्वयं विद्यादिनापि व्येदरेषामधिकदर्शनात्, विद्याविदुषश्च
जनकतामात्रेण द्वयंशितम् । द्वावभागे II. 66-72, pp. 49-52.

1090. अनुशासन 105. 12 closely resembles मनु IX. 208. It is 'अनुप्राप्तं
पितुर्वाचं अङ्गभक्तलोभकः । स्वयमीदितत्त्वं तु नाकामो दातुर्नर्ति ॥'

not share with others if he does not desire to do so, because that acquisition was made by his own activity. *Manu* IX. 206 mentions besides *vidyādhanā*, gifts from friends, gifts at the time of marriage and at *mudhaparśa* as the separate property of a person. *Yaj.* (II. 118-119) prescribes: 'whatever is acquired by a person himself without detriment to or expenditure of paternal wealth, gifts from friends, gifts at marriage, these are not liable to be divided among a man's coparceners; similarly he who recovers ancestral property lost to the family (and not recovered by the father and others) would not have to share it at a partition with his coparceners nor his gains of learning'. The construction to be put on these words was a bone of contention even before *Viśvarūpa*. The *Mit.* understands that the words 'whatever is acquired without detriment to the paternal wealth' are to be understood as qualifying each of the following four kinds of property.¹⁰⁹¹ The result is that if a gift is acquired by a member from a grateful person who was placed under obligation by spending family wealth, if property was acquired by gift from a father-in-law who was paid from the family property some wealth for securing the bride for that member (as in an *āsura* marriage) or if the property lost to the family was recovered with the help of paternal estate or if a man learnt at the expense of the family and made gains from that learning, then these kinds of properties were liable to be partitioned among all members. The result of taking the first half of *Yaj.* II. 118 as a qualification of the subsequent four kinds of property (as done by the *Mit.*) is that if a man receives a gift from a stranger even without detriment to the paternal estate the gift was liable to be divided among all members. The reason of the *Mit.* is that, if the first half of *Yaj.* II. 118 is not a qualifying clause of the four kinds of property, then the following four kinds need not be expressly mentioned at all. If whatever is acquired by a member himself without

1091. अथ च पितृद्व्यपविरोधेन यत्किञ्चित्कथमभितमिति सर्वत्रोक्तः । ... तथा पितृद्व्यपविरोधेनैतत्परम् सर्वत्रोक्तत्वादेव पितृद्व्यपविरोधेन प्रतिग्रहादप्यभेदे विभक्तनीयम् । नित्यं, on *Yaj.* II. 118-119. The word *त्रोक्त* is used here in the technical sense of *Jaimini* III. 1. 2 (*śeṣa-parārtatvāt*) on which *Sabara* says 'यस्तु अपरान् पराधेस्तं वयं त्रोक्त इति वक्तुः' । निश्चयः is opposed to this 'पितृद्व्यपविरोधेनापि नैवाद्यविभाज्यमेव, आरम्भसामर्थ्यात्' । अग्रे तु नैवाधिकमेव पितृधनस्तुपचलान्नितमभिभाज्यमिच्छन्ति. On *Yaj.* II. 118 the *Śāstra* remarks नैवादिग्रहणं पदार्थनाशं and again (VI. 1. 39 p. 115) तस्मात्साधारणधनोपचलान्नितं धनं विभजेदिति विधिः । और्ध्वदिपदं च वाक्येषु प्रदर्शनार्थम् ।

detriment to paternal or joint estate is by itself separate property then the following four will only be particular illustrations of the proposition contained in the first half of Yāj. II. 118. It would be opposed to the usage of *śiṣṭas* to say that gifts from friends or gifts at the time of marriage or gains of learning acquired at the expense of the family estate become the separate property of a person and, as to *vidyādāna* acquired from learning at the expense of the family, opposed to the express text of Nār. (dāyabhāga 10) "when one brother maintains the family of another brother who is engaged in studying the śāstras, he shall receive a share of the wealth gained by that study, though he (the supporting brother) be ignorant himself". Further, if the first half of Yāj. II. 118 were taken as a separate and independent clause by itself then it would follow that what is acquired by *prati-graha* (as a gift to a learned brāhmaṇa) without detriment to the paternal estate would be indivisible but the usage of the *śiṣṭas* is the opposite of this. That there was such a usage about *prati-graha* is admitted by the Dāyabhāga (VI. 1. 54 p. 121). It must be stated however that this view of the Mit. about the first half of Yāj. II. 118 is not shared by several writers and works such as the Dāyabhāga VI. 1. 8. p. 106, Dipakalika, Viśvarūpa, V. R. p. 501, Aparārka p. 723.

As regards family property lost to the family by the adverse acts of a stranger but recovered by a member with his own efforts without using ancestral estate, certain provisions deserve notice. Manu IX. 209 (= Viṣṇu Dh. 8. 18. 43), Br. (S. B. E. 33 p. 371 verse 12) and Kāt.¹⁰⁹² (866) lay down the special rule that if the father recovers property lost to the family, whether movable or immovable, with his own effort without using joint family funds, he may retain the whole of it as his self-acquisition. The rule of Yāj. II. 119 applies only where the property lost and recovered by one member (not the father) with his own effort and without assistance from joint estate is movable (which then becomes wholly his self-acquisition), but if the property so recovered by one member (who is

1092. अनाश्रित्य विदुर्दत्तं स्वशक्त्यामोति यद्धनम् । द्वापादेभ्यो न तद् दद्याद्विद्यालब्धे तु यद्धनेत् । यथास q. by वि. r. p. 502, स्मृतिच. II. p. 376, द्वापमान VI. 1. 5. p. 106 and VI. 1. 36 p. 113 : स्वशक्त्यापदुर्लभं नष्टं स्वयमाप्तं च यद्धनेत् । एतत्तर्जं विना दुर्लभं नान्नैव दद्यात्ते ॥ कालिदा. 866 q. by अपरार्क p. 728, स्मृतिच. II. p. 380, परा. ना. 111. p. 498.

not the father) is land, then the recoverer gets one fourth of it as his reward (according to Sāṅkha)¹⁰⁹³ and the remainder is divided equally among all members of the family including the recoverer. These rules have been followed in modern times by the British Indian Courts¹⁰⁹⁴.

Vidyādhana (gains of learning) has undergone the greatest changes of fortune since the earliest times to modern days. It was probably the first kind of self-acquisition recognised in very early times. Though the Āp. Dh. S. and Baud. Dh. S. say nothing about it, yet Gaut.¹⁰⁹⁵ (28. 28-29) lays down that all members (of a joint family), if not learned, should divide equally whatever is earned by them (by agriculture etc.) but what a learned man himself acquires by his learning he may not share with his unlearned brothers if he so desires. Hara-datta says that this applies only between brothers that are joint. Vasistha 17. 51 appears¹⁰⁹⁶ to give two shares to the acquirer of wealth at a partition among brothers and his rule probably represents a very early stage when the acquirer could not retain the whole of his self-acquisition but got only two shares

1093. एवं च पूर्ववर्त्ता च वो भूमिमेकश्चैव दुद्धरेष्यमात् । यथाभागं भक्त्यन्वये दुर्वांशं तु तुरीयकम् ॥ इति अङ्गिरसर्षभं ब्राह्मणद्वयविषयम् । अथ सर्वे तुरीयांशं दृष्ट्वा सात्रादिभिः सहोद्धर्ता यज्ञीषाद्वयया विभक्तव्यं स्यात् । द्वापतर p. 166 and p. 177. The मिता. (as printed) reads उद्धरेत् अमात् (which seems to be a misreading for अमात्) and remarks 'तत्र अने तुरीयांशद्वर्ता लभते दोषं तु सर्वेषां सममेव' and it requires that the recovery must be with the consent of the other members. Vide मद्. पा. 65† and द्वापभाष. VI. 2. 38-39 p. 129. The मि. र. (p. 499) attributes it to हारीश and remarks 'यद्य संज्ञितापी हारीशः पूर्ववर्त्ता...तुरीयकमिति वाक्यं लिखति स्म यद्य स्मृतिमहार्णवकामधेस्तु कल्पतरुपरिज्ञातयशुपल्लिखनादयुक्तमेव'. This remark of मि. र. is quoted by the द्वापतर (p. 177) and dissented from, as the मिताक्षरा and द्वापभाष cite this verse. As the verse is stated by the मि. र. so be not found in the परिज्ञात and as it is quoted in the मद्भनपरिज्ञात it follows that the परिज्ञात is a different work from the मद्. पा.

1094. Vide for example, 3 Mad. H. C. R. 150 at p. 152-153, 4 Mad. 250 at pp. 259-260; *Rajaba v. Trimbak* 34 Bom. 106 at pp. 110-111.

1094a. स्वयमर्जितमर्थेभ्यो वैद्यः कामं न दद्यात् । अर्थसाः सन्ने निमज्जेत् । गौ. 28. 28-29: विद्यामयीते इति वैद्यः । हरद्वज, पाणिनि IV. 2. 59 is 'तदर्थते नदद्यात्'.

1095. येन वैद्यो स्वयमुपाजितं दद्यात्त व्यग्रमेव तरेत् । वसिष्ठ 17. 31 (which reads स्वयमुपाजितं स्यात्). मिता, on पा. II. 119 and स्मृतिच. II. p. 273 read as above, द्वापभाष II. 41 p. 42 as सहव्यादिर्न, परा. भा. III. 560 'यदुपाजितं'.

in it and the rest of the joint family members took one share each in it. Manu IX. 206, Yāj. II. 119, Nār. (dāyabhāga II), Kāt.¹⁰⁹⁶ (868) and Vyāsa say generally that *vidyādhana* is not liable to be divided at a partition. Among writers of *smṛtis* Kāt. contains the most elaborate treatment of *vidyādhana* and of self-acquisitions in general. It will be set out in the sequel. But some of the *smṛtis* point out that even *vidyādhana* is partible, if learning was acquired at the expense of the family funds (as in Nār. dāyabhāga 10 referred to above) or when the learning was acquired in the family house itself from the father or an elder brother (Kāt.¹⁰⁹⁷ 874). The Dāyabhāga (VI. 1 42-49) discusses at great length the views of Śrīkara on Yāj. II. 118 and Manu IX. 208 and dissents from them and states his conclusion as follows: A man since his birth depends upon his family for food and maintenance and so if the words "without expending ancestral estate" were literally and widely interpreted, hardly any man can say that no paternal wealth was expended on him and so earnings of whatever kind would have to be deemed to be partible and there would be no propriety or purpose in the words of Manu IX. 208. Therefore it must be understood as done by Visvarūpa that the detriment meant is not the expenditure of food in maintaining a person in the house from infancy, but that when a member acquires estate by his learning or in any other way without giving or spending paternal wealth for acquiring that, then only it becomes his self-acquisition.¹⁰⁹⁸

1096. उपपश्यते तु पश्यत्ये विद्ययाः पश्यत्येकम् । विद्याधनं तु तद्विद्याद विभागे न विभज्यते ॥ कात्या. 868 q. by अथर्वक p. 724, कुल्लुक on मनु IX. 206, द्वायभाग VI. 2.1 p. 122 : विद्यायाः शीर्षधनं यच्च सौदायिकं भवेत् । विभागकाले तत्तरप नान्येहान्ये स्वरि-
न्विधिः । पश्यत, q. by अथर्वक p. 725 स्मृतिच. II. p. 274.

1097. वैदो वैद्याय नाकामो दुष्टार्थं स्वतो धनम् । पित्र्ये द्रव्ये समाश्रित्य न चेत्येन
न ददातुम् ॥ भारद्, द्वायभाग 11 : कुले विनीतविद्यायां भावुणां पितृतोषि वा । शीर्षायास्तु
यद्विचं विभाग्यं तद् ब्रह्मपतिः । कात्या. 874 q. by स्मृतिच. II. p. 275, परा. मा. III.
p. 565, स्व. म. p. 126. From this verse it appears that Kāt. echoes the
views of Br. In the स्पष्ट. नि p. 447 this verse is ascribed to बृह.

1098. यतो विविधपानार्थकालेन भक्षणाद्युपभोगोपयुक्तधनोपयोगादुत्तरपर्यन्तोपपत्तादि-
रूपस्य वर्ज्यमार्थायम् ।... अत एवीते विश्वरूपेण पितृद्रव्यं दृष्टव्यं यदि भोगाजितं धनं तदा
उत्तरपानादार्थं वैवाशिक्यदेवोक्तं न तु भक्षणाद्युपभोगात्तत्वेन तस्य स्वाम्यपानादितुल्यत्ववि-
रुद्धेन । द्वायभाग VI. 1 47 and 49 pp. 115-112. The printed विश्वरूप has no
corresponding passage.

Kat. (867-873) defines¹⁰⁹⁹ and illustrates vidyādhana as follows:—

That wealth is said to be the gains of *vidyā* which is acquired by means of learning received from another while subsisting on food furnished by others, when a matter (a doubt or difficult point) has been placed (before an assembly of learned men) with a wager, whatever is gained by (the display of) one's learning is known as *vidyādhana*, which is not divided at a partition. What is acquired from a pupil (i. e. by following the profession of teaching), by performing the work of a priest at a sacrifice, by propounding a question, by solving a doubtful point, by exhibiting one's knowledge, by disputation with a rival, what is gained by deep learning—all these are declared to be *vidyādhana*, which is not divided at a partition. The same is the rule in the case of artisans and as to whatever is obtained (as a reward) over and above the proper price of an article (which surplus becomes the self-acquisition of the member selling it). After vanquishing a rival in a wager whatever is obtained by (superior) knowledge should be known as *vidyādhana* and it is not liable to be partitioned. This is the view of Bṛhaspati. What is earned by an assertion of one's learning, what is obtained from a pupil (i. e. by teaching) and what is acquired on the analogy of priests officiating at a sacrifice—all these are known as *vidyādhana*, according to Bṛgu. What is obtained by the superiority of one's learning and from a sacrificer and from a pupil—all this is declared to be *vidyādhana*; acquisitions other than these are common (i. e. jointly owned) with others.

Kat. distinguishes between *kauryaadhana* (reward given by the king or a master when pleased with a soldier or servant

1099. परमकोपयोगेन विद्या आमानवतस्तु वा । तत्रा प्राप्तं धनं यत्तु विद्याम तं तदुच्यते ॥ उपपन्नमे तु यत्तुयं विद्याया वणपूर्वकम् । विद्याधनं तु तद्विद्याधनमे न विभज्यते ॥ शिष्यादा-
निजगतः पञ्चासन्निवृत्तपञ्चनिर्णयात् । स्वज्ञानशंसनाद् वादादुच्यं भावपन्नायकं यत् । विद्याधनं
तु तत्वाहुविभामे न विभज्यते । शिष्येणपि हि धर्मोयं मूल्याद्यन्वाधिकं भवेत् ॥ परं निरस्य
यत्तुयं विद्याया वणपूर्वकम् । विद्याधनं तु तद्विद्याया विभाग्यं ब्रह्मस्यतिः ॥ विद्यामतिज्ञया तस्य
शिष्यादात्तं वा वज्रमेत् । अविज्ञानपायेन यत्तुयमेतद्विद्याधने भुम्भुः ॥ विद्यामलङ्कृतं चैव वाग्यतः
शिष्यतल्लभा । एतद्विद्याधने मातुः सामार्यं यदुतोयथा ॥ कात्या. 867-873 q. by अपराजं
p. 724, वि. र. p. 302, स्व. म. p. 125; स्व. वि. (pp. 444-45) quotes all
except परं निरस्य, the first is quoted by the मित्ता, on वा. II. 118-119; all except
the first and last are quoted in the द्वापमान VI. 2. 1-14 which remarks at the end:
तदुच्यते यथा कथाचिद् विद्याया यत्तुयमर्जकरयैव तत् । नेतेषाम् । यदुतोयत्तु तु कात्यायनेन
वित्तरेणोक्तं श्रीकरोद्विधमनिरासार्थम् । अतः स्वज्ञानकथापनादिना यत्तु यत्तुयमेतत्तुयं तद्वि
विद्याधनमेव विद्यायैव विद्युये मतिग्रहदानात् ।

who putting his life in danger did an act of valour) and *dhvajāhṛta* (what is recovered in a battle after putting one's life in danger of death and after putting to flight the army of the adversary). Nār. (dāyabhāga 6) and Br. (S. B. E. vol. 33 p. 381 verse 78) appear to put both under *kāryadhana*. Kāt. divides the *bhūryādhanā* of Nār. and Br. into two, viz. *kanyāgata* (what is obtained at the time of marriage with a maiden of the same caste) and *cauāhika* (wealth that comes with one's wife). So it is the same as the *cauāhika* (of Manu IX. 206) and the *audāhika* (of Yāj. II. 118). Vyāsa mentions¹¹⁰⁰ a limitation that even wealth acquired by valour does not become the exclusive property of the acquirer if he used a horse and weapons belonging to the joint family; in such a case the acquirer gets two shares and the other members of the family one share each.

In modern times vidyādhana has been a fruitful source of litigation. The first verse of Kāt. quoted above has been cited in several cases such as *Durga Dāt v. Ganesh Dāt* 32, All. 305 at p. 312, where it is said that Kātyāyana's definition of vidyādhana is not exhaustive, but only illustrative (the same is the view of the Dāyabhāga).

The leading cases that discuss the texts and lay down propositions are noted below¹¹⁰¹.

Two propositions were well established by the cases, viz. (1) that money earned by a member of a joint Hindu family by the practice of a profession requiring special training was joint family property, provided such training was imparted at the expense of joint family property; (2) that gains made by personal labour and without the use or help of joint family funds by a member of a joint Hindu family, who was maintained out of joint family funds and received no more than an elementary or ordinary education suitable to his position as a member of that particular family were the self-acquisitions of such member. But all doubts and disputes are now set at rest by the Hindu

1100. साधारणं समभित्त्वं पतिविरुद्धनाशुषम् । और्षादिनामेति धनं प्राप्तत्वाद् धानिकः । तस्य भागद्वयं द्वेषं देशान्तु समभाजिनः ॥ व्यास उ. by अतारक p. 725. मय. नि. p. 446. एव. म. p. 127.

1101. *Chalakonda Alarami v. Chalakonda Ratnachalam* 2 Mad. H. C. R. 56; *Bai Manchha v. Narotamdas* 6 Bom. H. C. R. [A. C. J.] 1; *Paulien v. Paulien* L. R. 4 I. A. 109; *Lakshman v. Jannabai* 5 Bom. 225; *Krishnaji v. More* 15 Bom. 32, *Metharam v. Rewachand* 45 I. A. 41 (= 45 Cal. 666), *Gokatchand v. Huhanchand* 48 I. A. 162.

Gains of Learning Act (Act XXX of 1930) which provides that, notwithstanding any custom, rule or interpretation of Hindu Law, no gains of learning (i. e. education whether elementary, technical, scientific, special or general and training of every kind which enables a person to pursue any trade, industry or avocation), whether made *before* or *after* the commencement of the Act, shall be held not to be the exclusive and separate property of the acquirer merely by reason of his learning having been wholly or in part imparted to him by any member, living or deceased, of his family or with the aid of the funds of the joint family or of any member thereof or by reason of himself or his family having, while he was acquiring his learning, been supported wholly or in part by the joint funds of the family or the funds of any member thereof. This Act is thus retrospective.

All property of a joint family other than the separate property of individual members is liable to partition, i. e. as stated by Kāt., property of the grandfather, of the father and whatever is acquired by each member (by the use of joint funds¹¹⁰² is so liable). Separate property is said to be impartible (*avibhājya*) on account of the source from which or the manner in which it is acquired. But there are certain kinds of property which from their very nature are not allowed to be partitioned and have to be enjoyed in common or by turns.

The oldest provision on this point is contained in Gautama¹¹⁰¹ (28. 44-45) that water (well), (property set apart or destined for) pious uses or sacrifices and food prepared (for festivals etc.) shall not be divided nor women connected with individual

1102. पैतृमहं च पित्र्यं च पत्निकञ्चित्तत्त्वमजितम् । दायादानां विभागे तु सर्वमेतद् विभज्यते * कात्या. q. by दासभाण VI. 1. 1 p. 103, स्मृतिच. II. p. 273, श्रव. नि. p. 446, परा. मा. III. p. 556 'स्वयमजितं पित्र्याद्यविभक्तद्वयोपपद्यमेव' स्मृतिच.

1103. उदकयोगक्षेमकृतान्नेष्वविभागः । स्त्रीषु च संयुक्ताः । मी. 28. 44-45. This applies, acc. to Haradatta, to the concubines not only of the father but also to those of any member of the joint family. Vide Nagubai v. Monghibai 53 I. A. 153, 159-160 where Gaut. and Mit. are quoted.

members of the family (as concubines). Śaṅkha-Likhita¹¹⁰⁴ forbid the partition of a building,^{1104a} water vessels, ornaments and clothes that are daily worn by the respective members. Similarly Usanas says¹¹⁰⁵ "there is no partition among agnates even up to the thousandth generation of what is acquired by officiating as priests, of a field, of vehicles, prepared food, water and women". Prajāpati (quoted by Sm. C. II p. 277) asserts that there is no partition of houses, fields and temples (*yājña*), gifts made through favour by the father or mother. The prohibition against dividing a house or a field is explained in three ways. The Mit. on Yāj. II. 119 explains that it has in view a brāhmaṇa's son from a wife of the kṣatriya or vaiśya class, when the brāhmaṇa acquired it as a religious gift made to him for his learning, since Br. (S. B. E. 33 p. 374 verse 30) states "land bestowed¹¹⁰⁶ as a gift on a brāhmaṇa should not be given to the son (of the brāhmaṇa) from a wife of the kṣatriya caste; even if the father gives it to the son of the kṣatriya wife, after the father's death, the son of the wife of the brāhmaṇa class

1104. न वास्तुविभागो नोदपात्रालङ्कारोपयुक्तवाससाद् । शङ्खलिखितं q. by अपराकं p. 726, द्वापभाष VI. 2. 29 p. 127, स्प. म. p. 129, वि. र. p. 503. This śūtra is variously read. The द्वापभाष reads न वास्तुविभागो नोदकपात्रालङ्कारोपयुक्तस्त्रीवाससाभाषो यचाररूपानां विभाषयेति प्रजापतिः, while अपराकं reads न वास्तुविभागोऽनोदपात्रालङ्कारसंपुक्तस्त्रीवाससाधुपचाररूपानां विभागयेति प्रजापतिः; the वि. र. reads mostly like the द्वापभाष 'न ... नोदपात्रालङ्कारोपयुक्तस्त्रीवाससाभाषो यचाररूपानामविभाषयेति प्रजापतिः' and explains उदपात्रं स्त्रीधारिभाजनं, अलङ्कारीकृत्यस्त एव, अयुपयुक्तमुपयुक्तं तैरेकोपयोगविवक्षीवाससां न विभाग इति यावत् । अथ यचारवाससां यं यचारणमासात् । मेधा. on मनु IX. 219 seems to have this śūtra in view. If the reading is अयुपयुक्त it means 'what is of no use (as books to an ignorant member)', acc. to श्रीकृष्ण, स्त्री refers to women other than female slaves.

1104a. Compare sections 2 and 4 of the Partition Act (IV of 1893) about the division of a house and *Yaman v. Vasudev* 25 Bom. 73.

1105. अविभाष्यं सगोत्राणामा सद्वत्कुलादपि । वाचं क्षेत्रं च पत्रं च कुतश्चमुदकं स्त्रियः ॥ उज्जैनसू. acc. to मित्ता on वा. II. 119, रघुलिख. II. p. 277, परा. मा. III. p. 564, and प्यास, acc. to द्वापभाष VI. 2. 25 p. 127, वि. र. स्प. म. p. 130, वाचं वाज्रकर्मदन्धम्' मित्ता; 'वाचं वाचरधानं देवता वा न तु वाज्रकर्मदन्धं तस्य विद्यापनत्वेनैव सार्थत्वात्' द्वापभाष. Acc. to the *Dāyabhāga*, *yājña* means 'an idol or place of worship'. Three explanations are given in the स्प. म. p. 130 'वास्तुश्रेष्ठपरिविभाषयत्नात्तद्वर्मेवास्तुगोत्रचारलेखाद्विपरम् । यत्तिष्ठतीपात्रयोस्तयोः अविषादिविभागमतिशेषपरं पूर्वाकर्मिषेधात् । अथमुपयुक्तंमुपयेन विभागो न स्वधर्मत इत्येवंपरं वा' । मित्तार जीवति यस्मिन्वास्तौ तेन यदोपानमदिकं कृते तत्तस्याविभाष्यं पितुर-मतिषेधेनानुमतत्वात् । द्वापभाष p. 128.

1106. न यत्तिष्ठत्पूर्वेणा अधिपतिद्विगुताय वै । यद्यप्येवं पिता दधान्ते विभागो हरेत् ॥ q. by मित्ता. on वा. II. 119 (without name), ascribed to बृह. by मेधा. on मनु. IX. 153, स्प. म. p. 431, स्प. म. p. 103.

may take it away". Another explanation is that the prohibition refers to a site or dwelling for religious purposes and to a field that is meant for grazing cows. The third explanation is that the prohibition implies that when the house or field is of small value it should not be partitioned by metes and bounds, but there should be partitioning of the price only. The *Dayabhāga* gives yet another explanation (VI. 2. 30 p. 128) that if during the father's lifetime any of the sons builds a house or lays out a garden on a family site, then it should not be divided at a partition but assigned to him only.

The basic verse on things impartible from their very nature is *Manu IX. 219*¹¹⁰⁷ (= *Visnu Dh. S. 18. 44*) which says "clothes, vehicles, ornaments, cooked food, water (well etc.), woman, *yogakṣema* and ways—these are declared to be impartible". All commentators explain that clothes ordinarily worn by the several members are impartible, provided they are more or less equal in value but not costly ones nor new ones. The same remark applies to vehicles and ornaments. *Pracāra* means either "ways leading to the house, garden and the like" (*Mit.*, *Aparārka*, and *V. P.*) and also 'ways and pasture lands for cows and the like' (*Sm. C. II. p. 277*, *Kullūka*). The *Mit.* (on *Yaj. II. 118-119*) states a special rule from *Br.* that¹¹⁰⁸ the clothes and ornaments worn by the father, the bed and the vehicle used by him should on his death be donated to the *brāhmaṇa* invited at the father's *śrāddha*. As to ornaments, the *Mit.* following *Manu IX. 200* says that those ornaments that are ordinarily worn by the respective members or their wives should not be divided, but those that are not so used everyday should be divided. A well is to be enjoyed by turns and not to

1107. वस्त्रं यजमानद्वारे कुलाशुभद्वयं विप्रः । योगक्षेमं यचारं च न विभाज्यं यक्षकाले ॥
मनु. IX. 219 : *विष्णु* reads न विभाज्यं च दुस्तकम्. The express mention of books in *Visnu Dh. S.* is an indication of its posteriority to *Manu*. Several meanings are assigned to यज, योगक्षेम and यचार by different writers. All commentators of *Manu* except *Nandana* explain यज as vehicle (i. e. a horse, cart &c.), while *मन्दन* reads यज as पात्र (water vessel) and *अवरार्क* p. 725, *वि. र.* 504. *मनु. पा.* p. 683 explain यज as document evidencing a debt.

1108. पितृवृत्तव्याप्तिस्तु पितृकर्म विभज्यतां आह्नमोक्षे दातव्यानि । यथाह बृह-
 स्पतिः । यस्माद्वारं संपादि पितृवृत्तव्याहनादिकम् । मन्थमाह्वैः समन्वयत्वे आह्नमोक्षे समर्पये-
 दिताः । *मिता.* on *पा. II. 119*.

be partitioned by valuing it.¹¹⁰⁹ If there be a single female slave (not a concubine) she was to be made to work for the divided members by turns, but if there be several slaves they could be assigned to each or their price could be divided. The expression "*yogakṣema*" has been variously explained from very ancient times. Langākeśi (quoted by the Mit.) states "those who know the truth say that 'yoga' means 'sacrifices' and *kṣema* means *pūrta* (i.e. works of charity like wells). They both (i.e. the money set apart for these or the merit derived from these) are impartible, as are also the bed and the (wooden) seat (used by the father or other member)." From this verse the Mit. concludes that *yogakṣema* means sacrificial acts performed with *śrauta* or *smārta* fire and charitable gifts such as constructing a tank or park etc. For *īṣṭa* and *pūrta* vide H. of Dh. vol. II. pp. 147, 843-844 and pp. 914-915 n. 2112 for the Mit. on *yogakṣema*. The words "yoga" and "kṣema" occur even in the Rgveda VII. 86. 8, X. 89. 10, X. 166. 5 and in Tai. Br. III. 9. 19. 3 and Ait. Br. 37. 2. Even though joint family funds are spent for these still they are impartible. The Mit. further states that according to some *yogakṣema* means¹¹¹⁰ "royal ministers and purohita" who bring about the welfare of people, while others hold that the word means "umbrella, chourie, weapons, shoes, and the like". From Gaut. IX. 63 and XI. 16 it appears that *yogakṣema* came to mean even before Gautama's time "comfortable life" or "easy and happy way of maintenance" (particularly for a learned brāhmaṇa). The V. R. p. 504 tells¹¹¹¹ us that,

1109. Vide *Shantaram v. Vaman* 47 Bom. 389 for the proposition that, both according to the Mit. and the Vyavahāra-śāyāka, a piece of land reserved as a common passage at the time of partition cannot be subsequently divided and *Nathubhai v. Bai Hansgauri* 36 Bom. 379 and *Govind v. Trimbal* 36 Bom. 275 for the propositions that rights of way and rights to wells and water belonging to a joint family are, if numerically unequal, indivisible, that there is a presumption that they continue joint and undivided even after partition, unless it is proved that at the partition a right of way or to water was exclusively allotted to a single member (at p. 277 and p. 282 the texts about water are quoted).

1110. योगक्षेमशब्देन योगक्षेमकारिणो राजमन्त्रिपुरोहितान् उपयन्त इति कश्चित् । छत्रचामरशङ्खोपानयनभूतय इत्यन्ये । मिता. on वा. II. 119. Vide *Parthasarathy v. Tiruvengada* 30 Mad. 340, 343-44 for *yogakṣema* in the Mit.

1111. योगक्षेमे विवृक्तेन राजकुलाद्व्यपजीवमिति प्रकाशः । वल्लभपुत्रो योगो योगक्षेमादिविः क्षेमः क्षेमहेतुमुपादीत्याह । वि. र. p. 504. The meaning given by Prakāśa appears to be the one intended in some mediæval grants called *yogakṣema* grants, for an instance of which vide *Vaman v. the Collector of Thanu* 6 Bom. H. C. R. (A. C. J.) p. 191 at p. 195.

according to Prakāśa, *yogaksema* means "maintenance or annuity descending from the father (to the son) at a royal palace" and that Halāyudha explained *yoga* as meaning a ship or the like and *ksema* as fort. The Sm. C. II. p. 277 after quoting Laugākṣi gives an alternative explanation that *yogaksema* means the wealth gained by a learned brāhmaṇa resorting to a rich man for his maintenance.¹¹¹²

Kaut. (III. 5) states¹¹¹³ the view of the ācāryas that those who are poor may divide even their water vessels and Kaut. adds that this dictum is fallacious or contradictory. Kāt. (882-884) brings together several things that are impartible¹¹¹⁴ "money that is entered in a document and is set apart for a religious purpose, water, women, a *ubandha* (periodic gain) that descends hereditarily, clothes worn (on the body every day), ornaments, whatever else that is not fit to be divided—these should be so employed by co-sharers that they may be enjoyed (in common by all) at the proper time. A pasture for cattle, ways, clothes worn on the body (every day), money lent and what is set apart for religious purposes—these should not be divided. This is the view of Brhaspati."

Brhaspati (S. B. E. 33 p. 382 verses 79-84) has a good deal to say about things impartible. He finds fault with Manu IX. 219 for his somewhat wide proposition that clothes, ornaments

1112. अथवा योगक्षेमार्थमुपस्थितेभ्यस्सकाशाद् यो रिचधानो लाभः स एवात्र योगक्षेमक्षयेनोच्यते । स्मृतिच. II. p. 277, गौ. IX. 63 and विष्णुधर्मसूत्र 63. 1 prescribe योगक्षेमार्थमीभ्यस्सकामिच्यते .

1113. उदुपाशाण्यपि निष्किञ्चना विभजेरक्षित्याचार्यः । छलमेतदिति कौटिल्यः । अर्थशास्त्र III. 5. For the meaning of छल, vide स्वामयूत्र I. 2. 51. कौटिल्य means that if a man has at least water pots he is not निष्किञ्चन so far, as, if he is really निष्किञ्चन, he can have no water pots even.

1114. धने पञ्चनिविष्टं तु धर्मार्थं च निष्कपितम् । उदुक् चैव द्वासाश्च निवर्गयो यः क्रमागतः * धनं कलमलङ्कारो नातुरूपं तु यद्वैते । यथा कालोपयोग्यानि तथा योग्यानि वस्तुभिः * योग्यचारश्च स्या च वस्त्रं यथाहोपोजितम् । यथोप्ये न विभजेत धर्मार्थं च वृत्तव्यतिः * आख्या. 882-884 q. by अपरार्ह pp. 725-726, वि. र. pp. 504-505. स्मृतिच. II. p. 277 refers to the first and last ; द्वायनाम VI. 2. 27 p. 127 has the verse योग्यचारश्च &c and reads यथोप्ये and क्षिप्यार्थं for धर्मार्थम् . द्वासाश्च is probably a misreading of द्वासश्च. The first half may be split up in two 'bond debts and what is set apart for a religious purpose' (द्वासाधनाय यथादि—says वि. र. p. 505) ; * यथोप्ये यथोप्येनानि हलायुक्, यथोप्ये यथोप्येनानि पुस्तकादि तत्र विभजेत मूलादिभिरिति पारिजातः वि. र. p. 505.

and the like are impartible. He says¹¹¹⁵ "those who declared that clothes and the like are impartible have not given proper thought. In the case of the rich, their wealth may consist of (valuable) clothes and ornaments. If these (clothes and ornaments) be kept joint (i. e. undivided) they cannot yield subsistence nor can they be assigned to one alone (out of many co-sharers). They should therefore be distributed with skill, otherwise they will become useless. Clothes and ornaments may be divided by selling them (i. e. by dividing the proceeds of sale), debt consigned to writing is divided after recovering it (i. e. the bond itself is not divided), cooked food (may be divided) by exchanging it for uncooked food. The waters of wells that have flights of steps and of other wells is to be enjoyed by drawing it out according to the needs (of the co-sharers); in the same way a field or a water course is to be enjoyed according to respective shares; a single female slave is to be made to work in the houses of the co-sharers according to their shares; if there be several female slaves, they are to be allotted in equal shares (to the sharers); this very rule applies to male slaves also; the income derived from a *yogakṣema* grant is to be equally divided and pasture lands (or ways) are to be used by the co-sharers according to their respective shares."

The next points to be dealt with are: what persons are entitled to partition and what is the mode of partition. But before doing so some preliminary remarks must be made on the expressions coparcenary and 'joint family', which occur at every step in modern works on Hindu Law. In the *smṛtis* and commentaries we come across the words *kutumba* (Nār., *dattāpradānika* 6 or Yāj. II 175), or *avibhakta-kutumba* (Yāj. II 45). A joint Hindu family consists of all males lineally descended from a common male ancestor and includes their wives and unmarried daughters. A daughter on marriage ceases to be a member of her father's

1115. वस्त्रादयोऽविभाज्या वैयक्ये तेन विचारितम् । धने भवेत् समुदासो वस्त्रादङ्गार-
संभितम् ॥ मन्वस्मृत्यनुसन्धानेन दत्तं नैकरूपं शक्यते । पुत्राणां विभजनीयं तदनुसन्धानेनैव
भवेत् ॥ विक्रीयं वस्त्राभरणमुपसृज्यते लेखितम् । कुतश्चैवाङ्गुलानि परिवर्त्य विभज्यते ।
उद्धृत्य कुप्यात्पम्भरत्नसौम्येन युज्यते । तथा भग्यान्मसौम्येन मत्तैश्च विभज्यते ॥ एका क्री
कारवेत्कर्म यथाशेन ह्ये ह्ये । बहुषः समंशतो देधा दासानामप्यप्ये विधिः ॥ योगक्षेमवत्
लाभः समत्वेन विभज्यते । प्रचारश्च यथाशेन कर्तव्यो विविधभिः सदा ॥ इह. q. by अपराक
p. 726, स्मृतिच. II, 377, वि. र. pp. 505-506. Br. generally holds Manu in the
highest veneration as he says वेदाधोपनिबन्धपूर्वत्वात् ताधान्यं तु मनुस्मृती । मन्वर्ध-
विपरीता वा स्मृतिः सा न प्रशस्यते ॥ (q. by अपराक p. 625 and कुल्लूक on मनु I. 1);
but here he criticizes Manu IX. 219.

family and becomes a member of her husband's family. Under the Mitākṣarā a Hindu coparcenary strictly so called is a much narrower group than the joint family. It comprises only those males who take by birth an interest in the joint or coparcenary property i. e. a person himself and his sons, son's sons and son's grandsons form for the time being a coparcenary. The diagram and the note below¹¹¹⁶ will explain the limits of a coparcenary.

A coparcenary is purely a creation of law; it cannot be created by act of parties, except by adoption. In order to be able to claim a partition, it does not matter how remote from the common ancestor a person may be, provided he is not more than four degrees removed from the last male owner who has himself taken an interest by birth.¹¹¹⁷

Some characteristic features of the Mitākṣarā coparcenary may be briefly stated. There is in the first place *unity of ownership* i. e. the whole body of coparceners is the owner and no individual member can say, while the family is undivided, that he has a definite share, as his interest is always fluctuating, being liable to be enlarged by deaths and diminished by births in the family. There is also *unity of possession and enjoyment* i. e. all are entitled to possession and enjoyment of the family

1116. Vide *Commissioner of Income Tax v. Laxminarayana* 59. Bom. 618 at p. 621.



Here all are to be assumed to be males. A and his sons B and C may form a coparcenary. So also, if B and C have each a son, then A, B, C, D, E, will form a coparcenary. If D and E have respectively F and G as sons, all persons from A to G will form a coparcenary. But here the limit is reached. If X is born during the lifetime of A, he being the son of the great-grandson of A takes no interest by birth and is outside the coparcenary during A's lifetime. But if X is born after the death of A, then he forms a coparcenary with B, D, F. Suppose that B dies before A. That will not however introduce X into the coparcenary of which A is the head, as X being the son of A's great-grandson F takes no interest by birth in ancestral property held by A. Suppose that B, C, D, E, F and G all die in the lifetime of A, then A becomes the sole surviving coparcener and X is not a coparcener along with A, because he is 5th in descent (counting both A and X) from A. Suppose A the only surviving coparcener dies. Then X will take A's property as an heir and not by survivorship as a coparcener.

1117. Vide *Moro v. Ganesh* 10 Bom. H. C. R. p. 444, pp. 461-463 where Mr. Justice Nanabhai Haridas very lucidly explains by several diagrams the limits of a coparcenary and what persons are entitled to demand a partition and from whom.

property and the possession of one is ordinarily possession on behalf of all. Further, while the family is joint and some coparceners have many children and others have few or none or some are absent, they cannot complain at the time of partition about some coparceners having exhausted the whole income and cannot ask for an account of past income and expenditure. Kāt. (888) expressly states so.¹¹¹⁸ Moreover, the joint family property devolves by survivorship i. e. on the death of a coparcener his interest lapses and goes to the other coparceners, subject to this that if the deceased has left a son, grandson, or great-grandson, the latter represents and occupies the place of the deceased coparcener when a partition takes place. A female cannot be a coparcener (even if she be the wife or the mother). Another characteristic is that each coparcener has a right to enforce a partition. The affairs of the family are managed by the father and if he be very old or dead, by the senior brother or member or by any other member with the consent of the senior member (Nār., dāyabhāga 5 and Śāṅkha quoted above in note 1067). The manager is called *kartā* in modern times though the smṛtis and digests employ words like *kūṭumbin* (Yāj. II. 45), *grhin*, *grhapati*, *prabhu* (Kāt. 543) and not *kartā*. He has special powers of disposition (by mortgage, sale or gift) of family property in a season of distress (for debts), for the purposes and benefit of the family (maintenance, education and marriages of members and other dependents) and particularly for religious purposes (śrāddhas and the like).¹¹¹⁹ The father has the same powers as manager and certain other special powers, which no other coparcener has. The father can separate his sons from himself and also among themselves if he so desires, even if they do not desire to separate.¹¹²⁰ (Yāj. II. 114); while an ordinary

1118. बन्धुनापहतं दायं बलात् न ददायेत् । बन्धुनामपि चकानो भोगं नैव ददायेत् ॥ कात्या. q. by दायभाग XIII. 7 p. 222, वि. र. p. 326. The दायभाग explains 'समादिना दायो न बलात् अविभक्तं तु वदितं युक्तं तदसौ न दायः' and वि. र. 'तद्विभागकाले नामाधिकोपभोक्ता च भोगं दायवित्तं हन्यते.' The दायवत्स p. 183 says 'अवापहतपदं भाक्तम्'.

1119. एकोपि स्वापरे कुर्वादानाधमनविक्रयम् । आपकाले कुतुम्भार्थं धर्माय च विशेषतः ॥ इति । अन्वयः । अत्रासम्पत्तयेषु पुत्रेषु पौत्रेषु बाधुजनानादायसमर्थेषु ब्राह्मणेषु वा तथाविधेष्वविभक्तेष्वपि सकलकुतुम्भापि स्वाभाविके उपयोगे वाच्यपक्षेपेषु च पितृ-आज्ञाविषु स्वावश्यक दानाधमनविक्रयनेकोपि समर्थः कुर्वात् । इति । मिता. on पा. II. 114. The verse एकोपि is ascribed to व्यास by व्यस. नि. p. 411.

1120. This power of the father has been recognized even in modern times. Vide *Kandasami v. Doraisami* 2 Mad. 317, 321-322, *Nirman v. Fatch* 52 All. 178. But it has been held that the grandfather has no power to separate his grandsons *inter se*. Vide A. I. R. (1943) Mad. 327.

coparcener can only separate himself from the family. The father can make within reasonable limits gifts of ancestral movable property without¹¹²¹ the consent of his sons for performing indispensable acts of duty and for purposes laid down by the texts, such as gifts through affection (to wife, daughter, son or the like), the support of the family and relief from distress. The father can make a gift of even immovable property within¹¹²² reasonable limits for pious purposes only (such as to a family idol or to an idol in a temple at the time of obsequies). The father can sell or mortgage the joint family property to pay off an antecedent debt contracted by him for his own personal benefit, provided it is not illegal or immoral (vide p. 448 above). No coparcener (except the father or manager as stated above) can dispose of his undivided interest by gift, sale or mortgage according to the strict theory of the Mitākṣarā except with the consent of the other coparceners. This right to object to alienations made without consent or made without legal necessity is another characteristic of the joint Hindu family under the Mitākṣarā. H. (S. B. E. 33 p. 384 verse 93) says¹¹²³ "whether kinsmen are joint or separate they are alike as regards immovable property, since a single one from among them has no power in any case to make a gift, sale or mortgage of it." But in modern times the courts in Bombay, Madras and the Central Provinces have loosened this strict rule by holding that

1121. मयिमुक्तान्वाहानां सर्वस्यैव पिता प्रभुः । स्वावरस्य तु सर्वस्य न पिता न पितृ-महः ॥ धितुमादाश्च भुञ्जते वस्त्राण्यभरणानि च । स्वावरं तु न भुञ्जते यसादे सति पैतृके ॥ both quoted by the *मिता*, on च. II, 114, परा. म. III.484, (the first) by *दाचभाग* II, 22 p. 33 (attributing it to च.) and the first is ascribed to *व्यास* by *व्य. नि.* p. 411 and to *विष्णु* by *विवादतण्डव* folio 100. Vide note 1033 above.

1122. Vide *Ramalinga v. Sivachidambara* 42 Mad. 440, *Gangi Reddi v. Tammi Reddi* 54 I. A. 136, 140, *Sri Thakurji v. Nanda* 43 All. 560 for the validity of gifts of small immovable property by the *harta* for religious purposes. But in *Jinnappa v. Chimmara* 59 Bom. 459 a gift of a small portion of joint family immovable property by the father to his daughter on the ground that she looked after him in his old age was set aside at the suit of his grandsons.

1123. वयं बृहस्पतिवचन-अविभक्ता विभक्ता वा सपिण्याः स्वावरे समाः । वृक्षो ह्यनीशः सर्वं दानाधमनविकल्प-इति तद्वि अविभक्तेषु दानस्य मयवस्थादिकस्यानीश्वरत्वात्सर्वान्वय-आवश्यं कारणं । विभक्तेषु तस्मात् विभक्ताविभक्तसंशयवद्वानेव व्यवहारसीकृत्योप सर्वापेक्षुना न पुनरेकस्यानीश्वरत्वेनापि विभक्तासुमतिपरिरेकेणापि व्यवहारः सिध्यत्येवेति व्याख्येयम् । *मिता*, on च. II, 114. The *स्मृतिच.* II, p. 309, the *व्य. म.* p. 136 and some others read दानादाः for सपिण्याः; *दाचभाग* II, 27 p. 34 reads विभक्ता अविभक्ता वा सपिण्याः and attributes it to *व्यास*; *अपरार्क* p. 757 attributes विभक्ता वाविभक्ता वा to *कारण*.

a coparcener may sell, mortgage or alienate for value his undivided interest in coparcenary property without the consent of the other coparceners¹¹²⁴ and the courts have allowed the undivided interest of a coparcener in joint family property to be attached at the instance of a creditor for the individual debts of a coparcener. This is one of the most serious departures from ancient and medieval Hindu Law made by the Courts on the ground of equity. One more right of all members of the joint Hindu family is the right to be maintained from the property and income of the joint family. Such matters as the remedies of the purchaser or mortgagee from an individual coparcener are here left out of consideration as appropriate only in a treatise on modern Hindu Law.

The conception of a coparcenary under the *Dāyabhāga* system is entirely different from that of the *Mitākṣarā*. Under the *Dāyabhāga*, sons do not acquire any interest by birth in ancestral property, but the son's rights arise for the first time on the father's death and the sons take as heirs and not by survivorship. There is hence no coparcenary in the sense of the *Mitākṣarā* between a father and his sons. The father has absolute power to dispose of all kinds of ancestral property by sale, mortgage, gift, will or otherwise in the same way as he can dispose of his separate property. The son has no right to demand a partition during his father's lifetime. A coparcenary starts on the death of the father between the latter's sons or grandsons i. e. between brothers, uncles and nephews, or between cousins. If a coparcener dies without male issue, there is no right of survivorship in the other coparceners but the deceased member's widow or daughter may succeed to his share and thus even females may become members of a coparcenary under the *Dāyabhāga*. Each coparcener takes a defined share under the *Dāyabhāga* (not an indefinite one as under the *Mitākṣarā*). Any coparcener under the *Dāyabhāga* can sell, mortgage, or dispose off by gift or will his share (*Dāyabhāga* II. 28-31).¹¹²⁵

1124. Numerous cases lay down this proposition; vide, for example, *Vasudeva v. Venkatesh* 10 Bom. H. C. R. p. 139 which was approved of by the Full Bench in *Fakirappa v. Chanappa* 10 Bom. H. C. R. p. 162. *Villa Butten v. Yamenamma* 8 Mad. H. C. R. 5.

1125. On विभक्ता ... एको ह्यनीश; etc. the दायभाग (II. 28-30 p. 34-35) remarks 'स्वामिबन्धनं तु स्वामित्वेन दुर्धृतदुरुपगोचरविक्रयदानादिना कुदम्बविरोधादधर्म-नमित्तज्ञापनार्थं निषेधस्तु न तु विक्रयाद्यनिष्यधर्मः। एवं च स्वामिं द्विपदं ... विक्रय-प्रायेवमादित्तं सकृत्प्रेष्येव वर्जनीयम्। ... तेन दानविक्रयकर्मपततिविशतु सत्करणाद् विषमति-क्रमो भवति न तु दानाद्यनिष्यतिः। बन्धनशतनापि वस्तुनोऽन्यथाकरणादिकः।'

Every coparcener is entitled to a share on partition. It has been already stated (on pp. 570-571) how in Bombay a son is not entitled to a partition if the father is *joint* with his own father, brothers or other coparceners and does not assent to the son's claim. There is a volume of case-law about a suit for partition brought on behalf of a minor, but it has to be passed over here, as there is hardly anything corresponding to this in the works on dharmaśāstra. The texts provide for the case of a son who was in the mother's womb at the time of partition but was born after it. If A and his sons B and C, who are members of a joint family, come to a partition and take one third each of the family property and six months later A's wife gives birth to a son D, then the partition has to be reopened and D will get $\frac{1}{4}$ ($\frac{1}{3}$ if the mother is given a share) of the family property that will remain after meeting all proper charges since the first partition and taking into account all income and accretions during the interval. The same rule applies to a partition among brothers, when the widow of a predeceased brother gives birth to a posthumous son conceived before the partition but born after it. Vide Yaj. ¹¹²⁶ II. 122 and Visṇu Dh. S. 17. 3. Vasīṣṭha (17, 40-41) therefore recommends that when it is known that the wives of some brothers (predeceased) are pregnant the other brothers should postpone partition till the delivery of those women. Where a son is born as well as conceived after partition between a father and his sons the rights of the afterborn son are declared by Gaut. ¹¹²⁷ 28. 27, Manu IX. 216, Yaj. II. 122, ¹¹²⁸ Nār. (dāyabhaga 44), Br. (S. B. E. 33 p. 372 verses 17 and 19) that he takes the share allotted to the father and also all the self-

1126. पितृविभक्ता विभागानन्तरौपक्षस्य भगं द्यूतः । विष्णुधर्मसूत्र 17. 3; दृष्टपादा तद्विभागः स्वादावप्यविशोभितात् । वा. II, 122, on which the *mita*. remarks 'एतच्च विभागसमयेऽप्यत्रह्य ज्ञातुर्भावीवामपक्षभर्ता विभागादूर्ध्वमुपक्षरपादि वेदितव्यम् । स्वह-यर्तायां तु यस्यै प्रतिव विभागः कर्तव्यः । पक्षह वसितः । अथ ज्ञातुर्भा दायविभागः । पाश्चा-त्तयायाः स्त्रियस्तासामा पुत्रताभात् । इति ।'

1127. विभक्तः विष्णवे । मी. 28. 27; द्यूतैः सह विभक्तेन पित्रा दायव्यवहितम् । विभक्तस्य तत्सर्वमनीशाः पूर्वजाः स्मृताः ॥ दृष्टव्यं q. by *mita*. on वा. II, 122, दृष्टव्यं on मी. 28. 27, स्मृतिच. II. p. 307, दावभाग VII, 6 p. 131, स्व. म. p. 104.

1128. There is great divergence among commentators about Yaj. II. 122 विभक्त्यु द्यूते जातः सर्वर्तायां विभागभाक् । दृष्टपादा तद्विभागः स्वादावप्यविशोभितात् ॥

acquisitions of the father made after the partition.¹¹²⁹ The Mit. understands that the first half (of Yāj. II. 122) refers to a partition during the father's lifetime and provides that if a son was conceived and born to the father after partition he took the share allotted to the father and all the self-acquisitions of the father made after partition (*tathā vibhūgottarakūlam pitrā yat kīñcī arjitam tat sarvam vibhūgottarakūlam*) and the Mit. relies on Manu IX. 216 and Br. for this. The Mit. takes the 2nd half of Yāj. II. 122 as referring to a partition made after the father's death and states that, if a son was in the mother's womb when the brothers separated after the father's death and was born subsequently, the posthumous son would be entitled to reopen the partition and would get a share out of the property (not as it stood at the date of partition) that would be there after allowing for proper expenditure (e. g. payment of debts etc.) and accretions. The Mit. extends the same rule to a posthumous son born after partition to the widow of a brother who died before the partition and

1129. In *Natal Singh v. Bhagwan Singh* 4 All. 427, where after the father separated from his three sons he married a second wife, had a son from her and died leaving certain property inherited by him from a third person, it was held, relying on Manu, the Mit., Br. and the Viramirodaya, that the son born after partition was entitled to the whole of the property acquired by the father to the exclusion of the three sons that had separated from him. In *Chengama v. Munisami* 20 Mad. 75 (where a father partitioned his ancestral property half and half between his two sons, reserved no share for himself and subsequently another son was born to him) it was held that the subsequently born son was entitled to one-third by partition not only in the property as it stood at the date of partition, but also in the property acquired by the two sons by means of the produce of that property (relying on the words of Yāj. II. 122 "*āsvayayaivādhātā*"). The dates of the partition and of the birth of the son are not clear from the report. In *Ganpat v. Gopalrao* 23 Bom. 636 (where in 1875 a father separated his son born of his first wife by giving him one third of the estate and gave two thirds to his two minor sons from the second wife and lived with them and another son was born to him in 1880, who sued in 1894 claiming one-fourth of all property) it was held that the one third given to the son by the first wife could not be affected and the plaintiff was only entitled to claim a share in the property given to the other two sons, and further that the texts of Visṇu and Yājñavalkya are somewhat vague and are applicable only to the case of posthumous sons who have no provision made for them. Vide also *Shivaji Rao v. Vasantrao* 55 Bom. 267 for further limitations on this rule in favour of the after-born son.

when the fact of the pregnancy was not known to the separating brothers. Viśvarūpa regards the whole verse as laying down one proposition, the first half declaring that if a son (who had been already conceived) were born to the father after partition with the sons, he would be entitled to the share taken by the father, while the 2nd half declares that if the father took no share then the son so born would be entitled to reopen the partition and take a share of the property remaining after taking into account accretions and expenses. The Dipakalika seems to be of the same opinion as Viśvarūpa, but it adds that Manu IX. 216 provides for the case where the son is both conceived and born after partition. The Sm. C. (II pp. 306-307) holds that when in the father's lifetime partition takes place the sons separating should give a share to the after-born son, but the father should retain his, while the whole of Yāj. II. 122 applies to the case where partition is made after the father's death and a posthumous son is born to the mother or to the widow of a brother dying before partition. In such a case the partition should be reopened and a share given out of the property as it stood at the first partition or out of the property as found to exist at the reopened partition after allowing for accretions and proper expenses (for payment of debts, for *samskāras* of brothers and sisters); vide V. P. p. 463 for explanation of '*drśyād*' etc. The Vyavahāra-mayūkha (p. 105) follows the Sm. C. and V. R. (p. 539) in explaining the whole of Yāj. II. 122 as referring to the case of a posthumous son conceived before partition made on the father's death but born after partition from the mother or step-mother of the separating brothers or from the wife of a brother dying before partition.

An adopted son, if adopted by a coparcener in a joint family or by a sole surviving coparcener, becomes under the Mītakṣarā law a member of the coparcenary from the moment of his adoption and has the same rights to demand a partition as an *aurasa* son has. Under the Dāyabhāga even an *aurasa* son cannot claim partition during his father's life and so an adopted son would be in no better position. If after a person adopts he has an *aurasa* son, the adopted son's share becomes reduced according to most commentators, but this subject will be dealt with later on under adoption.

The *smṛtis* and some of the medieval and later digests even enter into elaborate discussions about the rights of a son or sons born from wives of classes lower than that of the father. Vide

Gaut. 28. 33-37, Baud. Dh. S. II. 2. 10, Kauṭ. III. 6, Vas. 17. 48-50, Manu IX. 149-155, Yāj. II. 125, Viṣṇu Dh. S. 18. 1-33, Nār. (śāyabhāga 14), Br. (S. B. E. 33 p. 374 verses 27-29), Sāṅkha (quoted in V. R. p. 531). It is not necessary to deal in detail with the varying provisions made in these works, as marriages with women of a lower class have not been in vogue for several centuries; but a few remarks will have to be made. Manu IX. 153 and Yāj. II. 125, Br. (S. B. E. 33 p. 374 v. 27) clearly state that if a brāhmaṇa has sons from wives of the four classes, the whole property should be divided into ten parts which should be distributed as follows:—four for the son of the wife of the brāhmaṇa caste, three for the son of the ksatriya caste wife, two for the son of the vaiśya caste wife and one for the son of the śūdra class wife. Manu IX. 154 (almost the same as Anuśāsana 47. 21) further provides that whether a brāhmaṇa leaves sons or no sons born (of wives of the three twice-born classes) the heir shall give, according to the law, to the son of a śūdra class wife no more than a tenth part of his estate. V. P. p. 487 and the Mit. (on Yāj. II. 133) after quoting Manu, make this quite clear. But as remarked by the Mit. on Yāj. II. 125 the son of a brāhmaṇa from a wife of the ksatriya or other lower class was not to share in land obtained by the brāhmaṇa by way of gift (vide Br. quoted in note 1106 above) though he could share land acquired by purchase or the like. A verse (attributed to Br. by Dāy. IX. 22 and V. R. p. 534 and to Devala by V. P. p. 466) denies altogether a share in land to a śūdra class wife's son of a brāhmaṇa, while Manu IX. 155 (the son of a person of the three higher classes from a śūdra woman gets no share in the paternal wealth) is variously explained, the Mit. saying that it applies only where the son has already got some property from his father while the Mayūkha and some others say that it applies to the son of a śūdra woman who is not married to the person of higher caste but is only a mistress. Kauṭ. III. 6 and Br. (quoted by V. R. p. 534) provide that the *pārakum* son gets $\frac{1}{4}$ of his father's estate and the nearest sapinda gets the remaining two thirds. Sāṅkha-Likhita (quoted by Medhātithi on Manu IX. 155) have the same rule as in Manu IX. 155. It is remarkable that early medieval writers like Viṅṇāṇesvara (about 1100 A. D.) or even later ones like Mitramiśra (first half of 17th century) in V. P. pp 464-466 enter with zest into elaborate explanations of Manu IX. 153 and Yāj. II. 125 and never expressly state that these verses had ceased to be applicable in their days, though there

are a few other medieval works like the Sm. C. II. pp. 288-289 and the Madanaratna¹¹³⁰ that either do not explain these verses at all or say that these verses are applicable to a different age. According to Manu (IX. 178, 160) the son of a brāhmana from a śūdra class wife is called *saudra* or *pārasava*, while according to Yāj. I. 91 he is called both *niśāda* and *pārasava* (vide H. of Dh. vol. II. pp. 86-87 for *niśāda* and *pārasava*). But he is one of the secondary sons (*gaṇa-putra*) according to Manu (IX. 180), Vas. 17. 38 and others. Writers from Aparārka downwards quote certain¹¹³¹ verses from Saunaka on matters forbidden in the Kali age (*kali-varjya*) one of which is the acceptance of sons other than *aurasa* and *dattaka*.¹¹³²

1130. असर्वेषु दुष्टेषु दुष्टवर्गनिर्मुक्तत्वादिकृतो यो विशेषः स कस्यानामसम्पत्तौ न विवहश्च द्विजन्मभिः इति आदिपुराणे कलिवर्ण्यकरणे असम्पत्तौपरिणामस्य निषेधात् सोमस्य मूर्धन्यसिक्तादीनां प्रचाराभावेन नैव प्रयोजितः । समपनिर्णयोद्वयोत् कलिवर्ण्यकरणेऽन्त्याभिरुदाहृतेन दुर्नारसेतरेषां तु पुत्रत्वेन परिग्रहा इति वचनेन कलौ दुष्टे दुर्नारसपुत्रिकापुत्रपतिरिक्तानां शेषजादीनां गौणपुत्राणां निषेधात् सांप्रतं तेषां प्रचाराभावेन तद्विभागविषयविशेषो नात्र निरूप्यते । मदनरत्न (folio 23a); अत एवास्मान्भिरसर्वपुत्राणां दत्तकेतरेषां गौणपुत्राणां दुष्टिकापास्तमुत्तरं च भागविधयो न निषेधयन्ते । संप्रत्यननुदीयमानत्वाद् इथा च ग्रन्थविस्तारापत्तेः । स्मृतिच. II. p. 289.

1131. अत एव कलौ निर्वर्तते इत्यनुवृत्तौ दौर्नारसेतरेषां तु पुत्रत्वेन परिग्रह इति । अपरार्क p. 739. Vide also परा. मा. I. 2. p. 97. व्यवहारसूत्र p. 107 (अथ दत्तकमिक्षा गौणाः पुत्राः कलौ वर्ज्याः । दुर्नारसेतरेषां तु पुत्रत्वेन परिग्रह इति तस्मिन्निषेधे तु पाठः).

1132. In *Natha v. Chotalal* 55 Bom. 1 the son of a brāhmana from a śūdra wife was held entitled to a tenth share in the estate of his father and uncle and that the remaining nine-tenths would go to the nearest agnate, and Manu and Yāj. are relied upon. But this would be opposed to the view of the Mayūkhya that secondary sons are not allowed now and is also against the spirit of the warning given by the Privy Council to Judges of modern times over 75 years ago in *Collector of Madras v. Mootoo Ramlinga* 12 Moo. I. A. 397 at p. 436 "the duty of an European Judge who is under an obligation to administer Hindu Law is not so much to inquire whether a disputed doctrine is fairly deducible from the earliest authorities, as to ascertain whether it has been received by the particular school which governs the district with which he has to deal and has there been sanctioned by usage. For under the Hindu system of law, clear proof of usage will outweigh the written text of the law." This passage (omitting the word "European") is quoted by the P. C. in *Atmaram v. Bajirao* 62 I. A. 139 where it is further held that in a conflict between smṛti texts and commentators the opinion of the latter prevails in the provinces where their authority is recognized. *Natha v. Chotalal* 55 Bom. 1 purports to follow *Bai Gulab v. Jivanlal* 46 Bom. 371. In both cases the parties came from

(Continued on the next page)

An illegitimate son has in certain circumstances rights of partition in the property of his putative father. An illegitimate son may be a son by a concubine who is a *dāsī* (i. e. who is in exclusive and continuous keeping) or he may be the son of a woman who is not a *dāsī*. The first is called *dāsīputra*¹¹³³ and the second is hardly ever dealt with in dharmasāstra works.¹¹³⁴

(Continued from the last page)

Gujarat where the Vyavahāramayūkha is of paramount authority. In both cases not a word is said about the proof of the usage of marriages between a brāhmana and a śūdra woman taking place in Gujarat but reliance is placed solely on the recognition of *anuloma* marriages by Manu and Yājñavalkya, the strong condemnation of *pratiloma* marriages by both and the inference drawn from the comment of Viśvanavāra and the remarks of Nīlakaṇṭha that *anuloma* marriages are not prohibited. With the most profound respect for the learned Judges who decided those two cases, it has to be said that they took up the position of legislators and did not merely interpret the Hindu Law in accordance with usage and ignored the text of the Mayūkha itself stating that all secondary sons (among which the son of a brāhmana from a śūdra caste wife is included by Manu) except *aurasa* son (who is defined by Yāj. II. 128 himself and the Mit. as the son of a wife of the same class) and *datuka* are forbidden in the present age. The decision in *Bai Gulab v. Jivanlal* was opposed to the considered view expressed by Chandavarkar J. in *Bai Kashi v. Jannadas*, 14 Bom. L. R. 547 at p. 352. "From this gloss of the Mitākṣarā from which Nīlakaṇṭha expressed nowhere any dissent it is reasonable to infer that, according to the leading authorities on Hindu Law as recognised in this Presidency, a *śūdra* wife is not permitted to a brāhmin, a *kṣatriya* or a *vaiśya*" and to the decisions of some other High Courts in India (vide 28 All. 458 for example). It should not be supposed that the present writer is entirely against such marriages. What he is concerned to emphasise is that the Legislature should deal with these matters, that Judges should not assume the role of legislators and give rise to conflict of laws which are inevitable if the same kind of marriage is held valid by the Bombay High Court and invalid by the Allahabad or Madras High Court.

1133. *Dāsīputra* occurs in the story of Kāvya Adūṣa in the *Āitareya* and *Sāṅkhya* Brāhmanas. 'मरुपमाः सरस्वती स्रग्मासत तद्वागि कपरो मरुपे निष्माद तं हेमे उपोदुर्वाच्य वै त्वं दुर्वोसि न वचं त्वया सह भवविषयम् इति'. श्रौ. भा. XII. 3. 'कपरो वै सरस्वती स्रग्मासत ते कपरोऽनुर्ध्वं सोमादुनपन्द्वाच्यः पुनः कितवोऽवाङ्मनः कपरो नो मरुपेऽद्विष्टेति'. ऐ. भा. 8. 1. Vide note 923 for *śūdrāputra* in the *Tāndya Br.* 18. 6. 6.

1134. Yāj. II. 290 appears to distinguish between a *dāsī* in general and one who is *avaruddhā* (in the exclusive and continuous keeping of a man) "अवरोद्धास दासीषु भुजिष्यत्स तथैव च । सम्पत्तयि दुस्मादाप्यः पञ्चाशत्पानिकं दम्" For the com. of the Mit. vide n. 1593 below.

From ancient times it had been settled that the *dāsi*putra of a person belonging to the twice-born classes is not entitled to a share on partition or to inherit, but is entitled to maintenance only. Gaut. 28. 37 provides¹¹³⁵ that even the son of a *brāhmaṇa* who is issueless from a *śūdra* woman (a concubine) should receive the means of maintenance provided he is obedient in the manner of a pupil. Br. (S. B. E. vol. 33 p. 374 verse 31) contains a similar rule for the maintenance of an illegitimate son born of a *śūdra* woman after the father's death. But as regards the son of a *śūdra* from a *dāsi* Manu IX. 179 provides that such an illegitimate son may take a share in the father's property if the father allows him to do so. The classical passage on the rights of the illegitimate son of a *śūdra* from a *dāsi* is Yaj. II. 133-134 which verses are introduced by the V. Mayūkha¹¹³⁶ with the words "Yaj. declares a special rule as regards one begotten by a *śūdra* on a woman (of the same caste) not married to him" and which may be rendered thus "even a son begotten by a *śūdra* on a *dāsi* may partake of a share at the choice (of his father). But, when the father is dead, the brothers should make him the recipient of a half share". This passage and the comments of the Mit., the V. Mayūkha, the *Dāyabhāga* have been cited and explained in numerous cases. The following propositions as deduced from the texts and the case-law may be set out here:—(1) the illegitimate son of a *śūdra* even under the Mit. does not acquire by birth any interest in the estate held by the father and so cannot enforce a partition in his father's lifetime, but the father may give him a share in his lifetime, which may even be equal to that of a legitimate son (4 Bom. 37, 44-45, 23 Mad. 16); (2) on the father's death an illegitimate son of a deceased *śūdra*

1135. शुद्रादुग्रोऽप्यनपत्यस्य सुश्रुतश्चेत्तमेत इत्तिदुलभमेवासिदिधिना । यौ. 28. 37. अनपत्यस्य सुश्रुतस्येति शुद्रयोनिः । लभेत जीवने शेवं सपिन्ताः समवाप्नुयुः शुद्र. प. by शुद्रभाग IX. 28 p. 141, स्वत. वि. p. 430.

1136. शूद्रेणापत्तिर्यितायामुपपन्ने विशेषमाह याज्ञवल्क्यः । ज्ञातोपि दारयां शूद्रेण काम-
तोऽज्ञातो भवेत् । सुते पितरि कुप्यते आतरस्यार्थभाषिकम् । अत्रातुको हरेरसर्वे बुद्धिगुणा
सुतादृते ॥ पृ. मधुख pp. 103-104; अत्र च शूद्रग्रहाण द्विजातिना दारयामुपपन्नः पितु-
रिच्छापापघो न लभते मात्तपथं दूत एव कृतम् । किम्वदुक्तलब्धेजीवनमात्रं लभते । मिता ;
विश्वरूप quotes a prose text of Bṛhaspati to the same effect 'पचाह बृहस्पतिः
'कामतश्च शूद्रावरोपजयत आतुरां संमानमात्रं वेते पितरि दयुः सुश्रुतश्चेत् । इति.
In *Rahi v. Govind* 1 Bom. 97 at p. 113 and in other cases the word
'*aparigṛhāyām*' in the V. Mayūkha has been wrongly translated as meaning
'an unmarried woman', when it really means 'a woman not married (to the
śūdra)'.

becomes a coparcener along with the legitimate sons and the former is entitled to seek partition (4 Bom. 37 F. B.); (3) on a partition the illegitimate son takes only one half of what he would have taken¹¹³⁷ if he were a legitimate son i. e. if there be one legitimate and one illegitimate son, the latter would take one-fourth and the former three-fourths; (4) if no partition takes place and the legitimate son or sons all die without partition, the illegitimate son would take the whole as the last survivor of the coparcenary (L. R. 17, 1 A. 128); (5) if there be no legitimate sons, grandsons, or great-grandsons of the śūdra father, the illegitimate son takes the whole estate;¹¹³⁸ (6) as the text of Yāj. refers only to a son, an illegitimate daughter is not entitled to any inheritance or even to maintenance (32 Bom. 562); (7) if the śūdra father be joint with his collaterals such as brothers, uncles or nephews, the illegitimate

1137. The decisions establish that *dāsī* is not to be taken in the strict literal sense (a female slave), but means a woman kept as a concubine, the connection being continuous, exclusive and lawful. In order that the illegitimate son of a śūdra may take a share or inherit, it must be shown that the connection between the śūdra man and the woman was not incestuous or adulterous or though adulterous at the beginning had ceased to be so when the illegitimate son was born. Vide *Rahi v. Govind* 1 Bom. 97 at p. 110, *Sada v. Balas* 4 Bom. 37 (F. B.) at p. 44, *Vithabai v. Pandu* 28 Bom. L. R. 593, *Saundararajan v. Aranachalam* 39 Mad. 136 (F. B.) pp. 152-159, *Tukaram v. Dinkar* 33 Bom. L. R. 289. But even the son of an adulterous intercourse has been held entitled to maintenance (1 Mad. 306, 34 Mad. 68, 47 Bom. L. R. 5 F. B.). The earlier cases in Calcutta (as in 1 Cal. 1, 19 Cal. 91, 28 Cal. 194), held that *dāsī* meant only a female slave and as slavery was abolished in India, there could be no *dāsīputra* strictly so called. But in *Rajaniath v. Nitai* 48 Cal. 643 (F. B.) the former Calcutta decisions were overruled and the Bombay High Court's interpretation of *dāsīputra* has been accepted. The passage of the *Dāyabhāga* (IX. 29 p. 143) which was to be correctly interpreted in the Calcutta cases runs "बृहस्पतिर्नृणां द्यावपृथिव्यादिवृक्षान् पितृभूम्यां द्यावन्तरुणां शहरः । तद्वाह मनुः । द्यावो वा- (मनु IX. 179) । अमुमतिमन्तरेण तर्षीशहरः । तद्वाह पाञ्चवल्क्यः । जामोपि- (वा. II. 133-34). The *Dāy.* passage is quoted on pp. 680 and 723 of 48 Cal. 643 (F. B.).

1138. अथ बहुवचनान्तर्गते स्वस्वभावाद्वाहं बृहस्पतिर्नृणां द्यावपृथिव्यादिवृक्षान् पितृभूम्यां द्यावन्तरुणां शहरः । तद्वाह मनुः । द्यावो वा- (मनु IX. 179) । अमुमतिमन्तरेण तर्षीशहरः । तद्वाह पाञ्चवल्क्यः । जामोपि- (वा. II. 133-34). The *Dāy.* passage is quoted on pp. 680 and 723 of 48 Cal. 643 (F. B.).

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son cannot demand a partition of the joint family property though he is entitled to maintenance as a member of the family provided the father left no separate estate (L. R. 58 I. A. 402). It has been held that if a *sūdra* keeps a woman of the *brāhmaṇa* caste as his exclusive mistress and has a son from her, he is not a *dāsi*putra (but acc. ancient works a *cāṇḍāla*) and is not entitled to inherit the estate the *sūdra* father as an illegitimate son. Vide *Ramchandra v. Havammaik* 37 Bom. L. R. 920 followed in 18 Lucknow 585. Further rules about the inheritance of the illegitimate son when in competition with the widow, legitimate daughter or legitimate daughter's son will be dealt with later on (vide n. 1356 below).

An absent coparcener stood on the same footing as a minor (vide note 1077 above); in modern times he would be subject to the law of Limitation (Articles 127 and 144 of the Indian Limitation Act of 1908).

The wife cannot herself demand a partition, but if the husband himself separates his sons during his lifetime or if the sons claim a partition during the father's lifetime, the wife was entitled to a share equal to that of a son, according to Yāj II. 115. If there be several wives each gets a share equal to that of a son. There is a proviso that the wife or wives must not be in possession of *strīdhana* property given by the husband or by the father-in-law and that if there is *strīdhana*, then only as much more will be allotted to her as will make her share equal to that of a son (as stated in Yāj II. 148). The Mit. on Yāj. II. 52 states that at the husband's will the wife also gets a share of the family wealth but not by her own will¹¹³⁹. The *Madana-ratna* explains that the meaning¹¹⁴⁰ is simply this that the

1139. तस्मादनुर्विच्छेदा भाषाया अपि द्वापविभागो भवत्येव न स्वेच्छया । यथा वक्षति पवि कुर्वात् ... इति । मिता. on या. II. 52.

1140. पत्यु इति बहुवचनान्वयिपत्तिः स्वांशेन समानमंशो युद्धीयात् न तु तावत् पुत्रकृ-
कृत्यांशो द्वेषः । जायापारपोर्न विभागो विद्यते इति द्वाविचचनविरोधापत्तेः । मदनरत्न (ms.
folio 91 b). It is curious that the *मदनरत्न* ascribes जायापारपोर्न विभागो विद्यते to
द्वाविच; this sūtra is आप. च. सू. II. 6. 14, 16; vide above p. 451 and H. of Dh.
vol. II. pp. 429 and 518 for quotation from *Āp.* and p. 556 for a verse from
Tai. Br. quoted in *Mit. on या. II. 52* about husband and wife enjoying
together in heaven the rewards of religious acts. नात्र जायापारपोर्विभाग उच्यते चेन्न
द्वाविचचनविरोधः स्यात् । किं तु पत्यैव पुत्रविभागसमये तावत्तत्समं दद्यात् प्रीतिदानवत् ।
प. प. pp. 441-442. It is worthy of note that the *प. प.* p. 510 elsewhere

father when separating from the sons should take for each of his wives a share equal to that of each son, but it is not meant that the husband is to carve out separate portions of the joint property and hand them over to his wives, since such a procedure would be opposed to the *dictum* "there is no partition between husband and wife". The V. P. (pp. 441-42) after quoting this view of the Madanaratna refutes it by saying that Yāj. is not here speaking of the partition between husband and wife but between the father and sons and that the husband assigns to the wife a share as he may give a gift of affection to his wife. It deserves to be noted that the ancient commentator Viśvarūpa (on Yāj. II 119 of Tri. edition) anticipates modern legislation as he states that the widows of pre-deceased sons and grandsons also should be given the shares that would have been taken by their husbands if living along with his own wives by the father at the time of partition with his sons. Recently by the Hindu Women's Rights to Property Act (Act XVIII of 1937 as amended by Act XI of 1938), it is provided that when after the Act comes into force a Hindu governed by the Dayabhāga School dies intestate or where a Hindu governed by any other school dies leaving separate property, his widow will be entitled to the same share as that of a son and the widow of a pre-deceased son or grandson shall inherit in the same manner as a son or grandson and further where a Hindu governed by any school other than the Dayabhāga dies having an interest in joint family property his widow will succeed to a Hindu widow's estate as regards the interest he himself had. This last provision brings the law of the Mitākṣarā into line with that of the Dayabhāga and makes the widow of a deceased coparcener a member of the coparcenary and at one stroke does away with the fundamental doctrine of the Mit. about

(Continued from the last page)

refers the sūtras ज्ञापयामास विभागो विद्यते याजिह्वयादि सद्यस्ते कर्मसु to गौतम. It further says that the wife's ownership in the husband's property is only technical and not real and that when the husband dies and his ownership in joint family estate lapses her technical ownership comes to an end 'याजिह्वयादि ... ग्रहेषु चेति गौतमश्चात्राप्यत्रापि तद्विनिर्दिष्टिकपि स्वत्वमुत्पन्नं तत्राहः किमिति तस्मिन् कल्पत इति चेन्न । औपपत्तिकोऽस्ति न तु तात्त्विकः । पत्न्याः पतिवृत्त्यै स्वत्वं श्रीश्रीरघुदेवकलोलीभावापत्तेः सहाधिकारिकमेवोपायि न तु ज्ञापयामि पदपरम् ।' *वै. व. p. 310* ; समीकृतानुपदेष्टे धर्मोत्तरार्द्धकाः पुत्रपौत्रपत्न्यः स्वपत्यस्य भर्तृभगवताः जायते । *विश्वकप* on वा. II. 119.

male coparceners alone taking by survivorship joint family property.¹¹⁴¹

The mother (or step-mother) also, when the sons come to a partition after the father's death, is entitled to a share equal to that of a son in the coparcenary property.¹¹⁴² But she cannot compel a partition so long as the sons choose to remain joint. But her share is liable to be reduced on account of her possession of *stridhana* as in the case of the wife. Vide Yāj. II. 123, Viṣṇu Dh. S. 18. 34 and Nār. (dāyabhāga, 12). The Mit. (on Yāj. II. 135) combats the view of some predecessors that the mother does not take a share but only as much wealth as would be necessary for her maintenance, by relying on the words "equal share" occurring in Yāj., Viṣṇu, and Nār. which would be meaningless on that view. It also refutes another view that the mother takes an equal share with the sons when the ancestral property is small, while she takes only as much as would be necessary for her maintenance when the property is large, by stating that this view is liable to the fault of *vidhivairūpya* according to the conclusion established in the *Pārvamīmāṃsā*, that is, here the same sentence will be interpreted as laying down two different propositions in different sets of circumstances, which is not a legitimate or reasonable way of interpretation. The Sm. C. (II p. 268) held the same view about the mother having no right to a share and was criticized by the *Madanaratna* (by name). Several works like the *Vyavahārasāra* (p. 225) and the *Vivādacandra* (p. 67)¹¹⁴³ hold the

1141. Vide *Saradambal v. S. Subbarama* I.L.R. (1942) Mad. 630; *Jodu Rosamma v. Jodu Chenchiah* (1943) 2 M. L. J. p. 172 for the effect of the Act XVIII of 1937 on the status of widows.

1141a. जनस्यस्वधना दुर्बोधमार्गेण समं हरेत् इति स्मरणात् । असक्यता पातित्वज-
स्त्रीधनशून्या जननी दुर्बोधजीवद्विभागे कियमाणे दुर्बोधसममेवांशं हरेदित्यर्थः । स्मृतिच. II.
268. This text and the explanation are given also in the *समुच्चरण* (folio 92 a)
in the same words.

1142. स्त्रीणां सर्वांशमनंशत्वमेव । यत्रात्वंशश्चरणं पितृसूत्रं विभज्यतां मातापतेजं समं
हरेदित्यादौ तथापि किञ्चिद्दानं विवक्षितम् । अर्हति स्त्रीत्यशून्यो न दाये निरिन्दिषा अदाया
हि स्त्रियो मताः—इति बोधायनवचनात् । निरिन्दिषाः निःसन्धा इति प्रकाशः । अदाया
अनंशा दानार्थः । विवादचन्द्र p. 67. The स्मृतिच. (II. p. 267) also relies on बोधा-
यन. The जी. ध. सू. after the verse विना रक्षति ... न स्त्री स्वात्मन्यमर्हति has the sūtra
निरिन्दिषा ददायाश्च स्त्रियो मता इति श्रुतिः (II. 2. 53). In the वे. सं. VI. 3. 8. 2
we have the words 'तस्मात्स्त्रियो निरिन्दिषा अदायादीरपि यापात्स उपलब्धं वदन्ति'.
Vide Bühler's note in S. B. E. vol. 14 p. 231 on the confusion about
this text of Baud. समु. IX. 18 is 'निरिन्दिषा ददायाश्च स्त्रियोऽनुवर्तिमि ति धातिः *
on which मेधातिथि explains 'इन्दिष्वे कीर्षे चर्षमज्ञाकलादि'.

view that no woman (whether wife or mother) should get a share of the ancestral wealth but only as much wealth as is necessary for maintenance and rely on the words of Baudhāyana "there is a Vedic text that women are devoid of strength and take no share", which refers to a passage in the Tai. S. VI. 5.8.2, occurring in the context of the ritual of the Soma sacrifice "therefore women being destitute of strength take no portion (of Soma drink) and speak more weakly than even a wretched (low) man". Manus IX. 18 also contains an echo of this passage of the Tai. S. and of Band. Dh. S. There was an intermediate stage in the evolution of the rights of the wife or mother. The highest she could get in the husband's wealth was two thousand panas, according to Vyāsa,¹¹⁴³ which is variously read and explained, the Sm. C. (II. p. 281) saying that it means as much wealth as would every year yield an income of 2000 panas.

In modern times some High Courts such as those at Bombay¹¹⁴⁴ and Calcutta allow wives and mothers to have a share when the husband or the sons divide ancestral estate by metes and bounds, while in Southern India the practice of allotting shares to them has gone out of vogue long since and the Madras High Court does not allow a share to the mother but only maintenance. The Dayabhāga seems to have¹¹⁴⁵ held that a step-mother who was herself sonless was not entitled to a share when her step-sons came to a partition, but was only entitled to maintenance (vide *Srimati Hemangini v. Kedarnath* L. R. 16 L. A. p. 115 at p. 117).

1143. द्विंशत्सहस्रः परो दापः क्षिपे देवो धनस्य च । पञ्चस्रं च by स्मृतिच. II. p. 281, स्पष्ट. नि. p. 450, सिन्धुस्य on वा. II. 119.

1144. Vide *Dular Koeri v. Dwarkanath* 32 Cal. 234, *Damodardas v. Uttamram* 17 Bom. 271, *Jairam v. Nathu* 31 Bom. 54, *Hosbunna v. Devanna* 48 Bom. 468 for cases of a share allotted to the mother or step-mother. But see *Subramaniam v. Arunachalam* 28 Mad. 1, 8 for the statement that the right of a mother to a share on a partition between the sons is not enforced in the Madras Presidency. Vide *Nannuram v. Radhabai* L. L. R. (1942) Nag. p. 29 where it was held that the mother gets only maintenance when there is only a severance of interest between father and sons but no partition by metes and bounds.

1145. पितरि श्वोपरो सोऽद्विजादुभिविभागे क्षिपमाणे मांशेऽपि पुत्रसर्मांशो दातव्यः । सर्मांशवर्तिनी मांशेति वक्ष्यतात् । मातुषद्वयं जननीपरत्वात् न सपत्नीमातुषरत्नमपि सङ्गच्छतस्य सुखययोग्यानुपपत्तेः । द्वावभागे III. 29-30 p. 67.

If a person had several wives and several sons from each wife, some of the texts prescribed from very ancient times that the sons should divide according to the wives or mothers (i. e. *putnibhāga*, or which is practically the same thing, *mātṛbhāga* was recommended), though the generally recognized rule formerly as well as now is to divide according to the number of sons i. e. *putrabhāga* (ignoring the fact of their being born from ¹¹⁴⁶ different mothers). For example, Gaut. 28. 15 recommends that partition should be made by grouping the sons according to their mothers and then allowing a special share to the eldest among each group of sons. Both Br. (S. B. E. 33 p. 372 verse 15) and Vyāsa ¹¹⁴⁷ lay down that if there be many sons sprung from the same father, who are equal in caste and number but who are the sons of different mothers, a division according to mothers may be legally made. Such a partition on the basis of mothers is recognized in rare cases even now on ¹¹⁴⁸ the ground of custom in certain places and among certain castes.

A paternal grandmother or step-grandmother cannot herself demand a partition, but when a partition takes place between her son's sons, her own son being dead or when it takes place between her son and the sons of a deceased son she is entitled to a share. A text of Vyāsa says ¹¹⁴⁹ "the childless wives of the father are declared to be entitled to a share equal (to that of a son) and all grandmothers are declared equal to the mother". The Allahabad and Bombay High Courts hold that the grandmother is not entitled to a share when a partition takes place between her son and his sons, while the High Courts

1146. अतिमानु वा स्वस्वपर्वे भगवदिशेषः । गौ. 28. 15.

1147. समानजातिसंख्यया ये जातास्तेकेन धनवः । विभिन्नमातृकास्तेषां मातृभागः पदस्यते ॥ व्यासः, पञ्चकजाता बहुवः समाना जातिसंख्यया । सापत्न्यासैर्विभक्तव्यं मातृभागेन धन्यते ॥ बृह., both are quoted by द्वायभाग III. 12, परा. मा. III. p. 303, ख. म. p. 102, वि. र. p. 475 (बृह. only).

1148. Vide *Pulaniappa v. Alayan* 48 I. A. 339 for a case from the Madras District in the Madras Presidency, where a custom among the *chettis* of allowing a partition on the principle of *putnibhāga* (division of property according to wives or mothers) was upheld.

1149. अनुमातुः पितुः पत्न्याः समानांशः प्रकीर्तिताः । पितामहोऽथ सर्वांस्ता मातृपुत्र्याः प्रकीर्तिताः ॥ व्यास उ. by अपराजितं p. 730, द्वायभाग III. 3, 2 p. 68, स्मृतिच. II. p. 267, वि. र. p. 484. The मद्र. वा. (p. 664) remarks: यदा तु पितामहोपाजितं पते पितृपुत्री विभज्य पृथक्कृतवदा पितामहपत्नी सपुत्रा पूर्वांशरीत्या समानं लभते मातापुत्रो समे हरेदिएकत्वात् पितामहोपाजितस्यैकत्वाच्च । यदि पितामहपत्न्यपुत्रा तर्हि स्वातन्त्र्यं पीनित्वं लभते नांशम् । तथा पैतामहपत्न्यविभागे मातांशे न लभते किं तु स्वावरणादिकमेव ।

of Calcutta and Patna hold that she is entitled to a share even in this last case¹¹⁵⁰.

On account of certain bodily, mental or other defects and certain conduct also persons were excluded in ancient India from demanding a share on partition and also from taking by inheritance. Gaut. 28. 41, Āp. Dh. S. II. 6. 14. 1, Vas. 17. 52-53, Viṣṇu Dh. S. 15. 32-39, Baud. Dh. S. II. 2. 43-46, Kaut. III. 5 speak¹¹⁵¹ of various grounds of exclusion from partition (and inheritance) such as lunacy, idiocy, impotence, excommunication for grave sins or lapses of conduct, blindness, incurable disease, entering a different āśrama (viz. that of forest hermit or *samnyāsa*). These grounds of exclusion probably arose from the fact of the persons labouring under them being regarded as incompetent to perform religious acts and from the close connection between property and its use for religious purposes. Jaimini¹¹⁵² (VI. 1. 41-42) lays down two propositions, viz. that one who is suffering from an incurable or irremediable bodily defect is not entitled to undertake vedic rites, such as Agni-hotra, but that one who has some defect which is remediable may engage in them and Śābara gives a blind man, a deaf man and a cripple as persons who are incompetent to engage in Vedic rites. The story of the brothers Devāpi and Śantanu (vide

1150. Vide *Vithal v. Prahlad* 39 Bom. 373 (partition among grandsons), *Kanhaiya Lal v. Gauri* 47 All. 127 (partition between grandsons), *Babuna v. Jagat Narain* 50 All. 532 (partition between one son and his predeceased brother's son), in all of which the grandmother was held entitled to a share. See *Sheonarain v. Janki Prasad* 34 All. 305 (F. B.), *Jamnahai v. Vasudev* 54 Bom. 417 for the proposition that in a suit for partition between father and his son only the paternal grandmother is not entitled to a share; but vide *Budri Roy v. Bhugvat* 5 Cal. 649, *Krishnalal v. Nandeshwar* 4 Pat. L. J. 39, 42-44 (for the opposite proposition that the grandmother would be entitled to a share in a partition between her only son and the latter's son). In view of the fact that Vyāsa declares the grandmother to be equal to the mother it appears that all grand-mothers, whether sonless or not, should secure a share.

1151. जघङ्गीषो जतंगौ । वी. 28. 41; एकधनेन उपेक्ष्योषाविना जीषन् पुत्रेभ्यो द्वार्षं स्वभजेत् समं द्वीषन्मूलं पतितं च परिहास्य । आप. ध. सू. II. 6. 14. 1; अतीत्यवहारान्मासाच्छादनेष्विभुः । अन्धजघङ्गीषस्यसन्निपादिताथ । अकर्मिणः । पतितजघङ्गपर्वण्य । वी. ध. सू. II. 2. 43-46; अर्नडास्त्वाभ्रमास्तरयताः । द्वीषाग्नसपतिताथ । वसिष्ठ 17. 52-53; पतितद्वीषाचिद्विद्वदोपविक्तास्तदभागरिणः । सिद्धधर्मसूत्र 15. 32; पतिक पतिताज्जाताः द्वीषाध्यानेहाः । जघोन्मतामधकुडिनश्च । अपेक्षा III. 5.

1152. अणुलीनश्च तद्धर्मः । उत्पत्तौ नित्यसंयोगात् । जे. VI. 1. 41-42.

H. of Dh. vol. II. p. 109) as narrated in the Bhṛad-devata¹¹⁵¹ states that the elder brother Devāpi suffered from a skin disease and so refused the kingdom which went to his younger brother Śantanu. We know from the Mahābhārata that Dhṛtarāstra who was blind from birth, though elder, had to give up the kingdom in favour of his younger brother Pāṇdu¹¹⁵². The Mī. (on Yaj. II. 135) energetically combats the view put forward by some predecessors that all wealth is meant for sacrifices. They relied on two smṛti passages¹¹⁵³ "all *drauṇya* (all kinds of wealth or movable property) has been created for the sake of sacrifices; therefore all those who are not competent to perform sacrifices are not entitled to share ancestral wealth but are only entitled to food and raiment. Wealth has been created for sacrifices; therefore one should employ it (or spend it) on purposes of dharma and not on women, fools and irreligious people". Kāt. (852) and Br. (S. B. E. 33 p. 371 verse 10) contain similar remarks. The Mī. does not accept this proposition, which argues that on that hypothesis no gifts (apart from sacrifices) that are recommended by the śāstras will be possible, nor can one accomplish two of the *puruṣārthas*¹¹⁵⁴ viz. *artha* and *kāma* (as required by Gaut. IX. 46, Yaj. I. 115) and that the verses quoted above only mean that whatever wealth is collected for sacrifices should be spent only for that purpose even by the sons of the man who collected it, since a smṛti text condemns generally everyone who does not spend wealth collected for a sacrifice for that purpose to becoming a crow or a *bhūṣa* (a cock or water fowl) in the next life. The Mī. further argues that the view would be opposed to the conclusion of Jaimini III. 4, 20-24 that the Vedic injunction "one should wear gold on one's person" is merely *puruṣārtha* and not '*kravārtha*'. Aparārka

1151. लम्बोष्ठी राजपुत्रश्च कविपेनसुतोऽभवत् । बृहदेवता VII. 156; न राजपुत्र-
महोमि लम्बोष्ठीपतेरपिद्वयः ॥ बृहदेवता VIII. 5.

1152. अन्धः करणहीनत्वाच्च वै राजा पिता त्व । उद्योगपर्व 147. 39; vide आदिपर्व
100 (chap. 100 of cr. ed.) for the congenital blindness of धृतराष्ट्र.

1153. यज्ञार्थं द्रव्यसुखं तत्रानपि कुत्रास्तु वै । अरिचक्रभाजस्ते सर्वे शासनाच्छाद-
भाजनाः ॥ यज्ञार्थं किरितं विलं तस्मात्तद् विनियोजयेत् । स्थानेषु धर्मवृद्धेषु न स्त्रीमूलविधानेषु ॥
q. by मित्रा. on ता. II. 135; परा. मा. III. p. 534; compare शान्तिपर्व 26. 25: यज्ञाय
सुखाणि वनानि धान्या यज्ञाय ब्रह्मः दुरुषो रक्षितः च । तस्मात् सर्वं यज्ञ एवोपयोग्यं धने न
कामाय हितं यज्ञस्तु ॥ The *स्व. मयूख* p. 157 appears to ascribe the verse यज्ञार्थं to
देवत and the *वृषत्पर्व* p. 172 ascribes it to कारकायन. Vide यथा यथा विभागस्तु
धने वामार्थेतामिषात् । तथा तथा विभागस्तु विद्वद्भिर्निर्योऽयम् ॥ कात्या. 852 q. by स्मृतिच.
II. p. 265; परा. मा. III. p. 490.

1154. Vide H. of Dh. vol. II, pp. 8-9 for the *puruṣārthas*.

also holds the same view¹¹⁵⁷ and adds that women have the authority to perform *pūrtadharmā* (acts of charity such as construction of wells, temples &c.). Vide H. of Dh. vol. II, pp. 844-45 for *iṣṭa* and *pūrtā*.

The most famous passages on the grounds of exclusion from inheritance are Manu IX. 201, Yaj. II. 140 and Nār. (dāyabhāga, 21-22). Manu IX. 201 provides¹¹⁵⁸ "impotent persons, outcasts (*paṭila*), persons blind or deaf from birth, insane persons, idiots, the dumb and those deficient in any organ (or sense) are

1157. सर्वस्या एव धनोत्पत्तेर्पञ्जार्थत्वे यमाणाभावात् । येन हि-द्वादश रात्रीर्दीक्षितो भूतिं चामैत-द्व्येवमादिवचनविहितं तेन धनोत्पत्तिः कालर्था । अथवा तु गुरुवार्येव । अपराधो p. 743.

1158. अन्तर्गो ऋषिपत्नी जायन्धवपिरी तथा । उ-मन्तजदमुकाश्च ये च कोचिकिर-
विद्वयाः ॥ मनु IX. 201 ; ऋषीषोऽप पतिवस्तुजाः पञ्चसुदन्मन्त्रको जयः । अन्तर्गोचिकिरपरोपाता
भर्तव्याः स्युर्निरंशकाः ॥ या. II. 140 ; सुते पितरि न ऋषिकुल्युग्मस्तज्जानयकाः । पतिवः
पतितापार्थं लिङ्गी द्वापशोभामिनः ॥ तेषां पतिवर्ज्येषां भक्त्यस्तं प्रदीयते । तत्सुतः पितृदापार्थं
लभेत्तु दौषकाजिताः ॥ देवल. q. by द्वापनाम V. 11 p. 102 (which explains लिङ्गी as
ममजितादि), वि. र. p. 490 (लिङ्गी भविष्येन कपयज्यतचारी), स्मृतिच. II. p. 272 ;
पितृद्विद्वि पतिवः पण्डो पञ्च स्यादौपपातिकः । औरसा अपि नैतं लभेत्तु लेखजाः कुतः ।
दीपतीश्वामवयस्ता जडोन्मत्तान्धपण्डवः । भर्तव्याः स्युः कुले चैते तदुपासर्वशोभामिनः ॥ नारद
(द्वाप. 21-22). पितृद्विद्वि is variously explained ; वि. र. p. 489 'द्वेषश्च पितरि जीवति
मारणाद्वैकलः सुते तु तदुद्देशेनोदकाद्यदानस्य' ; 'पितृद्वेषो नाम असौ मम पिता नेत्येवंप्रपः'
सरस्वतीविलास p. 364. In नारद, the मित्ता, द्वापनाम, अपराध, द्वापतत्त्व and एव, य.
read औपपातिकः (which means 'one guilty of उपपातक'). Vide मनु, XI. 59-66
and सिद्धान्तमञ्जु chap. 37 for long lists of उपपातकः such as मोषध, पारदानं,
अपाज्यपाजन &c. The स्मृतिच. II. p. 270 reads अपपातिकः and explains अपपातिकः
अपपातिकः ... अपपातिकस्य महापराधेन चतुर्विधकृतस्य and quotes सङ्गतिविधिपञ्च in
support 'अपपातिकस्य रिक्थपिण्डोदकानि निवर्तन्ते' which is read as अपपातिकस्य by
the द्वापनाम V. 3, p. 100, and अपराधो p. 720. The मदनरत्न and नव. मयूख p. 163
read अपपात्रित in नारद, while कल्पतरु read अपपात्रित and explained it as 'राज-
वशादिदोषेन वान्धवैरिषु यदापवर्जने कृतम्' (vide द्वापतत्त्व). The मदनरत्न gave
this very explanation for अपपात्रित. The वि. र. reads अपपात्रित (p. 489) and
gives the same explanation of it as the कल्पतरु. The नव. मयूख p. 163 says
it is better to explain अपपात्रित (derived from पात्रा meaning 'sea voyage')
differently, disapproves of the explanation of अपपात्रित given by the मदनरत्न
on the ground that for one guilty of sedition or high treason the breaking
of a jar or of excommunication is not prescribed and that अपपात्रित means
'one who goes to another continent or country by sea in a vessel for trade
and the like'. Constantly engaging in sea voyage was one of the matters
forbidden in the Kali age; vide 'द्विजराष्ट्री तु मोषातुः शोधिरस्याप्यसंखः' quoted
by नीलकण्ठ, which verse is quoted as from आदित्यपुराण by हेमाद्रि vol. III. 2
p. 667. नीलकण्ठ is wrong about high treason. गौतम (20. 1-4) declares that
one should desert even one's father who is guilty of regicide and describes a
ceremony in which an unclean vessel is brought by a slave or servant from
a dust heap and is filled with water from a jar carried by a female slave and
then the vessel is struck with the foot and emptied with the words 'I make
so and so one who will get no water from me.'

entitled to no share". Yāj. II. 140 declares that the impotent, the outcast and his son, a lame man, a mad man, an idiot, a blind man and one afflicted with an incurable disease are not entitled to a share. It will be noticed that Yāj. expressly excludes the son of an outcast, as do also Baud. and Devala. Nār. (dāyabhāga 21-22) says 'one hostile to his father, an outcast (*patita*), an impotent person, one who goes to another continent by sea (from India)—these even though they be *aurasi* sons shall not get a share; how can a *ksetraja* (a son of the wife raised by another person by appointment) get a share (if he has these defects) and persons afflicted with long-standing (like phthisis) and severe diseases (like leprosy), persons who are either idiots, insane or lame—these must be maintained by the family, but their sons are entitled to a share'. These verses of Manu, Yāj. and Nār. have been quoted and explained in numerous decisions of the courts in India, but all such cases are mostly of academic interest now since the passing of the Hindu Inheritance (Disabilities Removal) Act of 1928 and hence need not be dwelt upon here. The Act (XII of 1928) applies to the whole of British India except to persons governed by the Dāyabhāga school and provides that no person governed by the Hindu Law, other than a person who is and has been from birth a lunatic or idiot, shall be excluded from inheritance or from any right or share in joint family property by reason only of any disease, deformity or physical or mental defect. This Act is not retrospective and does not confer on any person any right in respect of any religious office or service or any right to the management of any religious or charitable trust which he would not have had before the Act. Therefore under the Act the only defects that would disqualify a person governed by the Mitākṣarā school from claiming partition or inheritance are congenital lunacy and congenital idiocy. Under the Dāyabhāga school the grounds of exclusion will still remain as before except as modified by judicial decisions and by other Acts. An important question under the Mit. school arises in this way. What is the exact position of a son that is congenitally idiotic or insane. Both Manu (IX. 201 and 203) and Yāj. (II. 140, 141) declare that they are *munāḥ* or *nirāśaka* (not entitled to a share of the ancestral estate), but must be given maintenance and if maintenance be not given by those who are liable to give it, they would incur sin (as Manu IX. 202 expressly says) and that the sons of disqualified persons take a share, if they are themselves free from defects. If A has a son B who is congenitally idiotic, is B still a copar-

cener of A (though not entitled to a share or to claim partition) so that A cannot make a gift of the whole or a portion of the property or a bequest thereof to his widow? This question arose in *Amarthamam v. Vallimayal* I. L. R. (1942) Mad. 807 (F. B.), where it was decided that, when A made a will in the above circumstances bequeathing all family property absolutely to his widow and two sons were born to the disqualified man B after A's death, the father had no power to make a will as the disqualified member B was still a coparcener (though not entitled to a share) and that he transmitted the heritage to his sons. The chief ground of the decision was a passage of the *Sarasvati Vilāsa* (explained on pp. 817 and 828-830) which is quoted below¹¹⁵⁹.

The grounds of disqualification apply to males and females alike, as stated by the Mit. on Yaj. II 140¹¹⁶⁰. A few remarks will be made on *patita* and his son. The commission of every sinful act did not make one *patita* as the word was technically understood. There were various grades among sins, which will be described in the section on *pātakas*. The grave sins were differently enumerated by different ancient writers. In explaining¹¹⁶¹

1159. अनङ्गी कृत्रियपतितापिति द्वित्योक्त्या दायाहं दत्तुमिः रिक्थदाहोर्वा पतिव्याहोर्वा दोषोऽङ्गी । ज्ञानमन्त्रपरिवापिति द्वित्योक्त्या तयोर्दोषोऽप्येव किं त्वेदमुक्त्यापि दोषोऽङ्गी विवाहसंस्कार-सम्प्रदायान् । तदाशब्दवर्गीयेन यजुःशास्त्रेण विवाहसंस्कारार्थांश्चेदङ्गीराः पतिप्राप्त्येति स्वरूपम् । उन्मत्तजडमूकाश्चेति सप्तद्वयोक्त्या तेषां भवेत्त्वा एव नाङ्गीराः । विवाहाहं न चेदिति शेषः । स. वि. p. 364. The S. V. does not appear to be laying down any novel proposition. All that this passage appears to mean is that though these disqualified persons cannot themselves enjoy a share, yet they do have a share (in theory) and if they can marry or are eligible for marriage their sons that are free from defects do take a share and that one cannot lay down a sweeping proposition that all congenitally dumb or insane persons or idiots can marry, but that there are degrees in these defects and in certain extreme circumstances these disqualified persons cannot marry. Vide Madras Law Journal for 1942 (Journal portion pp. 63-82) for a reasoned criticism of the F. B. case.

1160. पतिताद्विपुः स वैपितुल्यमनिकक्षितम् । अतश्च पत्नीवृत्तिपुत्रमावादीनामप्युक्तदोष-पुत्रमागमनंक्षितं वेदितव्यम् । निता. on या. II 140.

1161. सप्त सर्पाद्विः कवचस्ततश्चुलामेकानिद्वन्द्वहोरा मात् । अ. X. 5. 6: सप्त एव सर्पाद्विः कवचः ततश्च चुकः । तामानेकामपि अधिमण्डन् अहस्वान् भवति । स्तेरं सत्यारोहणं ब्रह्महत्यां धनहत्यां दुष्कृतस्य क्रमेण पुनः पुनः सेवो वातके अङ्गीरायामिति । निरुक्तः VI. 27. The meaning of this Rgveda verse is doubtful. The Nir. distinguishes between ब्रह्महत्या and धनहत्या. For the various meanings of पुनः, vide H. of Dh. vol. II p. 131 n. 290 and p. 148 n. 334. In the Nir. पुनः probably means 'foetus', as it does in Gaut. XXI. 9 'पुनश्च नि होमवर्णनोवापो च कीं पतति'. Vas. 20, 21 (पुनश्च न वधामो वाङ्मनं हत्वा धनहा भवत्यपिज्ञाते च गर्भम्) appears to give two senses to 'पुनश्च' (killer of a brāhmana or killer of a foetus when its sex is not known).

Rg. X. 5.6 "the wise made seven boundaries (restrictions) by transgressing even any one of which a man becomes sinful", the Nirukta VI. 27 enumerates the seven sins as "theft, violating the bed (of the *guru*), murder of a brāhmana, murder of a bhrūna, continual performance of sinful acts, telling a lie as to a sinful matter". In the Tai. S. II. 5. 1. 1, Śat. Br. XIII. 3. 1. 1. and other Brāhmana texts, the murder of a brāhmana seems to have been regarded as the gravest of all sins (vide H. of Dh. vol. II p. 147 and n. 333). In the Chandogya¹¹⁶² Up. V. 10.9 the five great sinners are declared to be the thief of gold, the drinker of liquor, the violator of the *guru's* bed, the murderer of a brāhmana and one who associates with them. Gaut. (XXI 1-3) declares that the murderer of a brāhmana, the drinker of liquor, one guilty of sexual intercourse with the wife of his *guru* (elder or teacher) or with women who are the sapindas of his father or mother, a thief (who steals a brāhmana's gold), an atheist, one who continually does forbidden acts, one who does not abandon a *patita* (son or the like through affection) and one who deserts his relations though they are not *patita* are *patitax* and so is one who incites another to commit a grave sin and also one who associates with a *patita* for a year (as regards a vehicle, a seat and bed). Āp. Dh. S. (I 7. 21 8-11) contains a longer list of grave sins (*pataniga*). Vaa. (I. 19-21) states that there are five grave sins (*mahāpātukas*) viz. violating the bed of the *guru*, drinking liquor, murder of a learned brāhmana, robbing a brāhmana of gold and contact with a *patita* by being his teacher or pupil or priest or by contracting a matrimonial alliance with him. The Baud. Dh. S. II. 1. 50-56 has a somewhat different list of *pataniga* actions viz. sea voyage, robbing a brāhmana of his wealth and misappropriating a deposit, perjury for land, trading in (forbidden) articles, service under a śūdra and having a child from a śūdra woman. Manu XI. 54, Yaj. III. 227 and Viṣṇu Dh. S. 35. 1 enumerate the five well-

1162. स्तेनो हिरेण्यस्य सूरौ विष्वक् सूरिस्तत्पमानसम्बद्धा ऋतिं यतन्ति चत्वारः पञ्चमश्चाचरन्तेति । छान्दोग्योप. V. 10. 9; बृह. उप. IV. 3. 22 mentions as great sinners the thief and the *सूनृह*. Though some later smṛtis employ the word स्तेय, it is always restricted by the commentators (e. g. Mti. on Yāj. III. 227) to the theft of brāhmana's gold. Vide H. of Dh. vol. II p. 580 for ancient texts asking a person to desert one's father who is *patita* or a regicide &c., but never his mother even though she be *patita*. Vide विष्णुधर्मसूत्र 57. 1-3. 'अत्र त्याग्यः । ब्राह्मणः । पतितः । विदुषं मातुलः सितृषाश्च द्युष्टः । सर्वं यथाभोग्याभ्यापतिबाह्याः ।'

known mahāpātakas, viz. murder of a brāhmaṇa, drinking of liquor, theft, incest and continuous association for a year with these. Association with any sinner of any sort for one year made the associator guilty of the same sin (Yāj. III. 261). *Samsarga* or *samyoga* (contact or association) was of various kinds. Manu XI. 180 (= Śānti 165.37 = Baud. Dh. S. II. 1. 88 = Vas. 1. 22) states that a person who associates with a *patita* for a year as regards using the same vehicle or seat or taking food with him in the same row becomes *patita*; but he becomes *patita* at once by being his sacrificial priest or by being his teacher of the Veda or by entering into¹¹⁶³ a matrimonial alliance with him. Vṛddha-Bṛhaspati¹¹⁶⁴ (quoted by Mītakṣarā on Yāj. III. 261) states that association (*samkara*) with a *patita* is of nine kinds viz. occupying the same seat or bed, taking dinner in the same row with him, cooking food in his cooking pots, partaking of cooked food prepared by him, being a sacrificial priest or employing him as a priest, being his teacher of the Veda or making him one's teacher of the Veda, giving him one's daughter in marriage or taking his daughter in marriage, taking food with him in the same pot. Devala¹¹⁶⁵ declares that sin is passed on from one man to another by conversation (with a sinner), by touching him, by his breath (coming in close contact with one's nose), by occupying the same vehicle (horse) or seat, by eating (in his company), by being a priest for him or by making him one's priest, by being his teacher of Veda or making him one's teacher or by matrimonial alliance. The same causes that led to a male being *patita* operated in the case of a woman to make her *patita*; there was one additional cause viz a woman became *patita* by sexual connection with a male of a lower class than herself (Gaut. 21. 9, Yāj. III. 297 and Śaunaka¹¹⁶⁶). The ancient sages were very considerate even

1163. संवत्सरेण वतति पतितेन सहाचरन् । एकपानभोजनासनशयनैः । यौनसौवर्ण्यैः सम्बन्धैस्तु सद्य एव । निष्ठा. 11. 3-5. 'यौवराज्येन धातनमभिधीयते मौख्य(मुख्य)शब्देन मुखमवलोकनादपानम्' मिता. on वा. III. 261.

1164. यथाह बृहद्बृहस्पतिः-पक्वश्यासनं पक्वितर्माण्यपक्वाज्जिभक्षणम् । राजनाशपायने योनिस्तथा च सहभोजनम् । नवधा सङ्करो योनी न कर्तव्याऽप्येः सह । मिता. on वा. III. 261 (printed text reads पक्वशय for पक्वाज्, but this seems to be wrong if we look at the explanation), अपराधे p. 1086, सूत्र. १ p. 587 (both ascribe to बृह.). These verses are ascribed to देवल in दीपकलिका p. 99.

1165. संतापपर्योनिःश्वससहवासासनाशनात् । राजनाशपायनाद्यौनाशपायं संज्ञा-मते क्षणम् । वाजने योनिस्तम्बान्धे स्नाशपायं सहभोजनम् । कुत्वा सद्यः पतयेव पतितेन न संशयः । देवलः १. by मिता. on वा. III. 261, अपराधे p. 1087.

1166. यथाह शौनकः । पुरुषश्च पानि पतनमिमितानि स्त्रीषामपि तान्देव । ब्राह्मणी हि नवर्णासेवायामपि पततीति । मिता. on वा. III. 261.

to fallen women. They provide that even women that are *patita* and have not yet performed the proper penance were not to be cast on the streets, but they were to be given a hut (near the house) for residence and bare maintenance that would keep body and soul together and were to be guarded against further lapses (Yāj. III. 296). Vide H. of Dh. vol. II pp. 571-573.

How far unchastity will debar a female from inheritance will be discussed a little later on. Adultery in general was an upapātaka only according to Manu XI. 59 and the ordinary penance for it was *cāndrāyana* or *govrata* (Manu XI. 117). But if the adultery was with a person of low caste, the woman became *patita* and would not have been entitled to a share on partition (as a wife or mother) under the old Hindu Law.

In the case of those guilty of grave sins who did not perform the *prāyascittas* prescribed for such sins there was a peculiar procedure called *ghatasphoṭa* prescribed for excommunicating them and severing all connection with them and treating them as dead, which has been described in H. of Dh. vol. II p. 388. Vide Gaut. 20. 2-7, Manu XI. 182-184, Yāj. III. 294. But when the sinner performed the appropriate *prāyascitta* (penance), the *smṛtis* declare that he became fit to be associated with (*vivahārjya*), he was to be welcomed by his relatives who were to take a bath along with him in a holy river or the like and who were to throw in the water an unused jar filled with water, he should offer grass to cows in the midst of his relations, they were not to find fault with him later on. Vide Manu XI. 186-187, Yāj. III. 295, 299, Vas. 15. 20, Gaut. 20. 10-14 (which prescribes the recital of certain Vedic mantras and the offering of clarified butter into fire). Āp. Dh. S. I. 9. 24, 24-25 and I. 10. 29. 1-2 prescribe for the sinner who kills a *guru* or a *śrotriya* that has performed *soma* sacrifice or a *bhrūya* certain observances till death, but declare that such a person can never get rid of the loss of the right of association with all people, that there is no return for him to his relatives.¹¹⁶⁷ In the *Nirṇaya-sindhu* (III Uttarārḍha pp. 567-68) and in the *Dharmasindhu* (III Uttarārḍha pp. 453-54) the rite of *ghatasphoṭa* for a *patita* and the rite for taking him back are concisely described.¹¹⁶⁸

The *smṛtis* state that when a man knowingly committed a sin, penances did not necessarily remove the otherworldly con-

1167. सुवे ह्येष ओषधे वा कर्मसमाप्तमेतेन विधिनोत्तमादुक्तमाश्रयेत् । नारपा-
स्मिहोके यथापत्तिर्विद्यते कर्मसर्वं तु निर्हणते । आप. य. सू. I. 9. 24, 24-25.

1168. Vide Appendix.

sequences of the sin altogether but the sinner became fit to be associated with (Yāj. III. 226). In the case of the *patita*, even his son born after he committed a grave sin was held to be *patita* by most writers of *smṛtis* (Yāj. II. 140, *Viśnu Dh. S.* 15. 35-36, *Kaut.* III. 5)¹¹⁶⁹. But in the case of the daughter a difference was mercifully made. *Vas.* (13. 51-53)¹¹⁷⁰ states "the sages say that one born of a *patita* becomes a *patita*, except a female child, since she is to go to another (person as his wife); one may marry her without accepting any wealth (of her *patita* father) along with her". Yāj. III. 261 also says that the daughter of a *patita* may be married after making her fast and after making her leave everything (belonging to the *patita* father) in her father's house. *Viśvarūpa* (on Yāj. III. 257) quotes a prose passage from *Hārta* to the following effect: the daughter of a *patita* should have fasted one day and night, should take a bath without clothes, should put on white and new garments in the morning, should loudly repeat thrice 'I do not belong to him (my *patita* father) nor is he anyone to me' and then she may be married at a sacred place (river etc.) or in one's (the bridegroom's) house.

These rules about a *patita* led to this result that if a Hindu changed his religion or was excommunicated or was made an outcast for some lapse that his caste looked upon with great disfavour, he was deemed to have lost his rights of partition or inheritance. The Caste Disabilities Removal Act (XXI of 1850) abrogates these rules of the ancient¹¹⁷¹ Hindu Law.

1169. तेषां चौरमाः पुत्रा भ्रातृद्वयिनः । न तु वननीयस्य वननीये कर्मणि कृते स्वयम्-
सौवर्णः । *विष्णुधर्मसूत्र* 15. 34-36. On *वा.* II. 140 the *मनु.* ५, 681 explains: सजाः
पतितादकुलपारिव्रज्यादुपपन्नः.

1170. पतितोत्पन्नः पतिनो भवतीत्याहुरन्यत्र स्त्रियाः । सा हि परत्यामिनी । तामोरिषा-
मुपेयत । *पति* 13. 51-53; कर्णो मधुद्वेदेष्टा सोपवासार्गकिचनाव । *वा.* III. 261; तथा
च दारिः । पतितस्य तु कुमारो विष्णुमाहात्म्याहोरात्रोपविता यतः शुद्धिनाहनेन वासना-
व्याघ्रमाहनेषां न मनेत इति चित्रचैरभिधानं तथैव कथ्यते सोद्वेदः । *विष्णुसूत्र* on *वा.* III.
257. The *मिता.* on the same verse of *वा.* quotes this passage (with slight
variations) as from *बुद्धहारीत*.

1171. Vide *Rhinnu Lai-y, Gobind. L. R.* 38 I. A. p. 87 where A and B, being father and son and forming a joint family and A becoming a convert to the Moslem religion, it was held that A did not forfeit his interest in the joint family property and that the only effect of the conversion was that it operated as a severance of A from the family and that one half of the property immediately vested in A and the other half in B. Vide p. 101 where the P. C. say that the Legislature virtually set aside the provisions of the Hindu Law. The Act of 1850 is felt by many Hindus as a great hardship and should be removed from the statute book. In England the Blasphemy Act of 1698 is still in force.

All the smritis say that those who are deprived of their rights to partition on account of the several defects mentioned are entitled to maintenance out of the family property as long as they are alive (Gaut. 28. 41, Vas. 17. 54, Visnu Dh. S. 15. 33, Manu IX. 202, Yaj II. 140 etc.). If the disqualified persons want to marry or are married, then their sonless wives that are chaste should be maintained (Yaj II. 142), but those that are unchaste should be driven out and so also those wives that are hostile to the family; but the Mit. adds that even hostile wives of disqualified heirs must be maintained provided they are chaste. If the disqualified person has an *aurasa* son or *ksetraja* son^{1171a} who is free from the defects mentioned above (such as impotence) he becomes entitled to a share of the joint family property and the daughters of disqualified persons are entitled to be maintained in the family and provision must be made for their marriages (Manu IX. 203, Yaj II. 141). It follows that disqualified heirs could not adopt, since Yaj. II. 141 mentions only *aurasa* and *ksetraja* sons. Many of the smritis did not allow even maintenance to the *patila* and his son (vide Baud. Dh. S. II. 2. 46, Kaut. III. 5, Devala, Visnu Dh. S. 15. 35-36). Coparceners were prevented from claiming a share at a partition if at the time of the partition they were labouring under the defects mentioned above. But if after partition¹¹⁷² the defect which disqualified a member be

1171a. तत्र क्रीवर्य सेवका दुष्टः सम्भवत्यप्येषामौरसा भवि । औरसक्षेत्रजयोर्दण्ड-
मितरपुत्रव्युदासार्थम् । मिता, on पा. II. 141. In former ages a *sevak* son was possible in the case of an impotent person. The अर्थशास्त्र also (III. 5) states सति भार्यायै विधायनपर्यन्तमहिषं भार्यं हरत् । आमाच्छादनामिदं वक्तव्यम् । तेषां च पुत्रद्वाराणां तुल्ये यजमाने सति । सुतेपुत्रान्धरा पुत्रोस्तेषामेवं वक्तव्यम् ॥ Manu IX. 203 allows even impotent persons to marry, though he appears to have disapproved of it. A *k्रीव* is indicated, acc. to काल्याण, by the following signs: 'य मुने केनिले वरय विष्टा चक्षुः निमज्जति । मेदुश्चोष्मादुष्काम्पां हीनः क्रीवः स उच्यते ॥ कात्या. v. by द्वाचभाष V. 8, p. 102. नारद (बौद्धिचोम 9-10) states the signs of a potent man and in verses 11-13 speaks of 14 kinds of impotent persons. The अर्थशास्त्र in III. 18 declares that the means of judging about impotence are women, froth of urine and the sinking of the faeces in water (क्रीवमिदं विष्टः मुनेनिलश्च विष्टानिमज्जन् नः). The close agreement between Kaṇṇ. and Kā. may be noted.

1172. एतेषां विभागात् यनेषु दोषजातानेकावमुपपन्नं न पुनर्विभक्तम् । विभागो-
त्तरकालमप्येवमादिना दोषनिर्हरणे भागभातिरस्येव । विभक्त्यु क्षो जातः सर्वार्थां विभाग-
भातिरप्यत्र समाप्तप्रायश्चरत् । मिता, on पा. II. 140. Vide *Deo Kishan v. Budh Prakash* 5 All. 509 (F. B.) and *Abilash v. Bhokhi* 22 Cal. 864 for cases respectively of insanity at the time of inheritance barring succession and supervening insanity not divesting a person.

united with a man in the reverse order of castes does not take the ancestral estate; but the approved view is that he should be given food and raiment till his death by the kinsmen. In case there are no kinsmen such a son takes the whole wealth of his father and if the father left no wealth kinsmen are not bound to maintain him.

Provision must also be made before ordering partition in a suit for partition by a brother for the marriage expenses of the unmarried sister or sisters of the brothers. Here there has been a great divergence of views among the writers of digests and commentaries. Kaut. III.5 (quoted below in n. 1181), Viṣṇu Dh. S. 18. 35 and 15. 31 and Br. simply state that wealth for the marriage expenses of the unmarried sisters must be set apart. But Manu IX. 118, Yaj. II. 124 and Kat. (858)¹¹⁷⁵ state that the brothers should get their unmarried sisters married by giving them one fourth share. The Mit. explains¹¹⁷⁶ that this does not mean that each brother is to give one fourth of his share to the sister (for in that case if there are five brothers and one unmarried sister she may get more than each brother) but that the unmarried sister is to get one fourth of what she would have got if she were a male and that if a person has sons and daughters from wives of different classes then the unmarried daughter of the wife of each class will take one fourth of what her brother from the same mother would have taken. The Mit. further adds that one should not explain that the word "one fourth" is not to be taken literally and that the unmarried sister gets only as much as is necessary for her marriage, since such an explanation is opposed to the express words of Manu IX. 118 and since Manu declares sinfulness as the consequence of not giving one fourth share. The Mit. informs us that its explanation was the same as that of Asahāya and Medhātithi and that Bhārucci gave another explanation (viz. that an unmarried sister was entitled to as much wealth as would be necessary for her

1175. कस्यकातामद्वलानां चतुर्थो भाग इवपते । पुत्रानां तु त्रयो भावाः स्वाम्यं तत्पथने स्मृतम् ॥ कात्या. १. by दासभाष्य III. 35 p. 69, स्मृतिच. II. p. 268, वि. १. p. 494. This text is cited in 53 Mad. 84 at p. 97.

1176. निजादंशाच्चतुर्थमंशं दद्यात् । अनेन दृष्टितरोपि पितृकर्ममंशभाषित्य इति मम्यते । न च निजादंशाद् दत्तमंशं तु तुरीयकामिति तुरीयांशविषयया संस्कारमात्रोपयोगेति इत्थं दत्तेति श्वाकथानं दुक्तं मनुवचनविरोधात् । स्वर्गोक्षेभ्यस्तु ... पतिताः स्मृद्विस्तवः ॥ ... पतिताः स्मृद्विस्तव इत्यकरणे मय्यापवन्नयाद्वदयं दातव्यता प्रतीयते । निता. ०० पा. II. 124.

marriage and not to a definite share). The Dayabhāga hold the opinion¹¹⁷⁷ that if ancestral wealth was small, the provision for the marriage of the unmarried daughter should be made by giving her a fourth share but if the wealth was ample then she should get only as much as was necessary for her marriage. The Sm. C., V. R. p. 494, V. C. p. 134 follow the view of Bhāruci, while the V. M. (p. 106), Madanaratna and V. P. (p. 456 ff) follow the Mit. The former group particularly relies on the texts of Devala¹¹⁷⁸ (wealth necessary for marriage should be given to unmarried daughters from the paternal estate), Sāṅkha (when partition of heritage takes place the unmarried daughter takes the maidenly trinkets, wealth for her marriage expenses and stridhana) and Viṣṇu Dh. S. 15, 31. In modern times the Courts allow no share to unmarried daughters but only provision for marriage expenses and this too is restricted to the unmarried sister of a person who requires or sues for partition and does not hold good as to the daughters of brothers or other collaterals¹¹⁷⁹. In *Bhupatī Shukul v. Ram Jatin* 45 All. 297 it was held (at p. 299) that "quarter share" in the text means as much money as will suffice for marriage expenses and that where the daughter was a cripple and blind and all the property was worth Rs. 500 an alienation of the whole of it by the widowed mother for raising a dowry for the daughter was justifiable.

1177. अल्पधने दुर्धैः स्वात्मार्थं ददादृष्ट्वा कन्यामप्यनुपयोज्यो दत्तव्यः । यथा मनुः स्मृत्यः । ... एवं च भद्रहरधने विवाहोचितधनं दत्तव्यं न अनुपयोजनियम इति सिध्यति । द्वापभाग III. 36, 32 pp. 69-70. The द्वापभाग p. 171 says: एवं दुरीषोऽदानवनिपाद-कमपि विवाहोचितद्वयदानवश्च ।

1178. कन्यामप्यनुपयोज्यं देवे वैवाहिकं वसु । अपुत्रकस्य त्वं कन्या धनेजा दुर्बल-रेतुः देवत q. by स्मृतिच. II. p. 268, स्पष्ट. नि. p. 431, परा. भा. III. p. 510; विभक्त्यमर्तं द्वापद्यो कन्यालङ्कारं वैवाहिकं स्त्रीधने च कन्या लभेत । शङ्ख q. by स्मृतिच. II. p. 269, नि. र. p. 493, परा. भा. III. p. 511; अनुदानोऽप्यविनायकस्य संस्कारं कुर्वीत । निष्पुत्रमनुष्य 15, 31.

1179. Vide *Suddhaya v. Anant* 33 Mad. 84, where A had a son S by one wife and a son S1 and three daughters D1, D2, and D3 by another wife and S sued A and S1 for partition and D1 was married after the institution of the suit, one-third of the marriage expenses of D1 were deducted from the one-third share of S1 and as regards one-third of the marriage expenses of D2 and D3 (which were yet to be incurred) his share (one-third) was charged with one-third expenses of marriage; but it was held that he was not liable for the marriage expenses of the daughter of his brother S1.

Mode of partition and allotment of shares.

Before allotting shares provision must be made out of the joint family property for the payment of joint family debts^{1179a}, for the personal debts of the father that are not immoral or illegal, for small gifts of affection made by the father, the maintenance of disqualified coparceners and female dependent members and for marriage expenses. Vide Manu VIII. 186 (as to family debts), Yaj. II. 117, Nar. (dāyabhāga 32) and Kat. 850 (for payment of father's debts and gifts of affection) and 542-43 (for the various legal necessities¹¹⁸⁰). If brothers want to separate and some of them are already married and others are unmarried then provision must be made for the *samskāras* (such as marriages) of the latter from the joint family property. Even Kautilya makes provision for the marriage of unmarried brothers and sisters¹¹⁸¹. Yaj. II. 124, Nar. (dāyabhāga 33), Br. (S. B. E. 33 p. 373 verse 21) lay down that the *samskāras* (upanayana, marriage &c.) of younger brothers must be provided for out of paternal wealth¹¹⁸².

1179a. कणरिक्वयोः समो विभागः । अर्थशास्त्र III. 5; कर्त्तव्यवित्तदानं च दत्त्वा शेषं विभाजयेत् । कात्या. 850 q. by स्मृतिच. II. p. 273, स्पष्ट. नि. p. 446 (reads रिक्व for कर्त्तव्य). The verse is quoted in *Ponappa v. Pappavayyannagar* 4 Mad. 1 (F. B.) at p. 49.

1180. कुटुम्बार्थमक्षेपेन दृष्टीर्त्तं व्याख्येयं वा । उपहृतमिहितं च विद्यादायकत्वं तु तत् । कन्याविवाहिकं चैव मेतकार्यं च पञ्चतन्त्रम् । एतत्सर्वं पञ्चाशत्वे कुटुम्बेन कृतं धनोः ॥ कात्या. 542-543 q. by अपराधे p. 647, स्मृतिच. II. pp. 174-175, वि. र. p. 56. धनोः means प्रभुत्वात्.

1181. संनिविद्यसमसंनिविद्येभ्यो नैवेदशक्तं द्युः । कन्यापत्यं पदानिकम् । अर्थशास्त्र III. 5; असंस्तुता ज्ञातरस्तु वे स्तुतश्च वर्त्तयसः । संस्काराणां प्राप्तिर्भवेत् पितृकाम्यध्याजनात् । बृह. q. by स्मृतिच. II. p. 269 (तत्राजीपत्यपुत्रेषु प्राप्नुयुः), वि. र. p. 422; असंस्तुतास्तु पालय पितृकादेव वा धमात् । संस्काराणां प्राप्तिर्भवेत् कन्यकाश्च यथाविधि । बृह. q. by स्प. मधु. p. 106, attributed to व्यास by अपराधे p. 731, परा. मा III. 305, स्प. म. p. 454 (all these read वे तच्च पितृकादेव ते धमात् or तद्वन्मात्), संस्कारः परिणयनम् । तत्पूर्वमेस्तुतैरसंस्तुतानां प्राप्तां कार्यम् । ... अस्मादेव च ज्ञाते साधारणज्ञानात् विद्या-विमुक्तिः । विश्वस्य on पर. II. 125 (Tri. ed.); असंस्तुतानां विद्यादानसंस्कारैरसंस्तुतानां प्राप्तां भविषीनां च विद्यादानसंस्कारं कृत्वा पञ्चाङ्गिनाम् कर्त्तव्य इत्यर्थः । मधु. पर. p. 618.

1182. This rule, according to Yaj. II. 124, was restricted to brothers only and was not to be extended. II, for example, there is a joint family consisting of several cousins with their sons and the marriages of some of the sons of the cousins are performed at the expense of the joint family, then when a suit is filed for partition no provision can be made for the marriages of other sons of the cousins. Vide *Ramlinga v. Narayan* L. R. 49 I. A. 168. In *Jairam v. Nathu* 31 Bom. 54, it was held that in a partition suit

(Continued on the next page)

It has already been seen that a father could during his life time separate his sons from himself and also among themselves¹¹⁸² and that he could assign shares of property to his sons. This power of the father is indicated even in the Tai. S. III. 1. 9. 4 (quoted above in note 1055) which refers to the story of Manu having distributed his wealth among his sons. It is argued by Āp. Dh. S. II. 6. 14. 11 that, as this Vedic text (Tai. S.) does not expressly state that any difference was made by Manu as to the shares of his sons, the division must have been equal, that therefore the preference of the eldest son is forbidden by the śāstras and that when the Tai. S. II. 5. 2. 7 states that "they distinguish the eldest by (a larger share of) the wealth" that is not a rule, but a mere *anuvāda* (a statement of fact) and the Vedic passage only recites what some people do in spite of the rule of the śāstras. The general rule, in the absence of express provision to the contrary, is equal distribution, as stated in Jal. X. 3. 53 (*samam agād-akṛitvāt*) which is relied upon by the *prima facie* view in Mit. on Yaj. II. 265. From the Tai. S. it appears that both practices viz. equal division of property among all sons and giving a larger share to the eldest were wellknown in those far-off ages. Āp. II. 6.

(Continued from the last page)

between father and sons, a minor son is entitled to have provision made for his thread, betrothal and marriage ceremonies out of the joint family property before the property is partitioned. In *Suntribai v. Shiv Narayan* 32 Bom. 81 it was held that marriage is one of the *manakāras* which both Yāj. and Nārada refer to. In 38 Mad. 556 the same principle was established. But in *Venkatarayudu v. Sivaramkrishnayya* 58 Mad. 126 and in *Pranjiann v. Motiram* 29 Bom. L. R. 1412 it has been held that the decisions in 38 Mad. 556 and in 31 Bom. 54 must be regarded as overruled by the P. C. decision in L. R. 49 I. A. 168, and in 58 Mad. 126 it was held that an unmarried brother is not entitled to have provision made for his marriage in a decree for partition. It is submitted with great respect that these Madras and Bombay decisions are wrong so far as unmarried brothers are concerned, that they go against the express texts of several writers like Kaṣṭhīya, Nārada, Br., Viśvarūpa, Maṭanapārijāta (p. 648) and that the Privy Council in 49 I. A. 168 was dealing with the provision for marriages of the children of coparceners and not of brothers.

1182a. It has been held in *Ekalu Subharami v. Ekalu Chenchuraghavan* (1945) 1 M. L. J. p. 151 that the paternal grandfather has no power to separate his grandsons among themselves and that it is only the father who has this power.

14. 7 clearly¹¹⁸² states that in some countries gold or black corn or black produce of the earth is the (special) share of the eldest. Almost all the sūtras and smṛtis prescribe the rule of equal division among the sons of wives of the same class as the father (vide Āp. Dh. S. II. 6. 14. 1, Baud. Dh. S. II. 2. 2-3, Manu IX 156, Yāj. II. 117, Viṣṇu Dh. S. 18. 36, Kaut. III. 5, Br. S. B. E. 33 p. 371 v. 10, Kat. 838). Some of these no doubt refer to the special share or provision given to the eldest (called *uddhāra*). Kaut. says "the father in a partition during his own life should not give a special share to one out of several sons, nor should he deprive a son of a share without any cause"¹¹⁸³ (such as blindness etc.). Kat. 843 says the same thing in almost the same words. But from certain passages when construed literally (such as Yāj. II. 116, Nār. dāyabhāga 15) it appears that the early Indian father often distributed the ancestral wealth among his sons just as he pleased. Nār. (dāyabhāga 15)¹¹⁸⁴ says: "When a father has distributed his property amongst his sons that is a lawful distribution for them (and cannot be set aside), whether the share of one be less or greater than or equal to the shares of the rest; for the father is the lord of all". To the same effect is Br. (S. B. E. vol. 33 p. 370 v. 4) who adds that if they try to alter the arrangement (made by the father) they shall be punished. But later on these passages were either held to apply to former ages (V. Mayūkha p. 99 says so) or to the self-acquired property of the father (Mīt. on Yāj. II. 114) or were so interpreted as to mean that the partition made by the father could not be annulled if it was legal, but if illegal it could be set aside (Mīt. on Yāj. II. 116, Madanaratna, Madanapārijāta p. 646). Nār. (dāyabhāga 16) himself denies authority to the father to give shares to the sons as he pleases

1182. एकधनेन ज्येष्ठो योषयित्वा । ... ज्येष्ठो द्वापाद्व द्वयेके । देशविशेषे सुवर्णं कृत्वा मातुः कृत्वं भीमं ज्येष्ठस्य । ... तच्छास्त्रैर्विहितमिदं । मनुः पुत्रेभ्यो द्वापं स्वभजद्विगविशेषेण श्रूयते । अथापि तस्माज्ज्येष्ठे पुत्रे धनेन निरवसायमन्तिषेकवत्पुत्र्यते । अथापि निष्पादुपादमन्तिषिमातुर्नृपापिदो यथा तस्मादज्ञापयः यशुनां सह चरन्तीति । ... सर्वे हि धर्मयुक्ता भ्राताः । आप. ध. सू. II. 6. 14. 1, 6-7, 10-13.

1183. जीवद्विभागे पिता नैकं विशेषयेत् । न चैकमकारणार्द्धविभजेत् । अर्थशास्त्र III. 5 p. 161; जीवद्विभागे तु पिता नैकं पुत्रे विशेषयेत् । निर्भाजयेच्च चैकमकारणमात्रकारणे विना ॥ कात्या. 843 q. by द्वापभाग I. 84 (p. 56), एव. प. p. 439.

1184. पित्रैव तु विभक्ता ये हीनाधिकसमैर्धनेः । तेषां स एव धर्मः स्वप्राप्तवत्त्वं हि पिता ननुः ॥ नारद (द्वापभाग 15) : समन्वृताधिका भागाः पित्रा येषां वक्तव्यताः । तेषां ते पालनीया विनेषास्ते स्वरूपथा ॥ बृह. q. by अथर्वार्क p. 717, स्मृतिच. II. p. 261, एव. नि. p. 413, वि. १. p. 468 (ascribes to नारद, बृह. and वा.). The एव. मयूख (p. 99) says 'यद्यपि नारदः—पित्रैव ... यशुः—इति तदुपात्तरपरम् ।'

when he is suffering from diseases, is angry (with a son or sons), or is engrossed in pleasures or pursues paths opposed to *śāstras*.

The eldest son has received special treatment in all ages down to modern times (vide p. 566 above). That treatment took various forms. Sometimes the texts say that the eldest son took the whole estate. *Āp.* II. 6. 14. 6, *Manu* IX. 105-107, *Nār.* (*dayabhāga* 5) refer to this view. *Manu* (IX 105-107) allows the eldest son to take the entire paternal estate, provides that the other sons should depend for their maintenance on the eldest son as on the father, remarks that the eldest by the mere fact of his birth enables the father to free himself from the debt to the ancestors and that therefore he (the eldest) deserves to get from the father the entire estate.¹¹⁸⁶

Another mode of dealing with the privileges of the eldest son was to give him some excellent or valuable article and then to distribute the rest equally. The *Tai. S.* II. 2. 2. 7 seems to have been understood by *Āp.* Dh. S. II. 6. 14. 1 and *Baud.* Dh. S. II. 2. 2-5¹¹⁸⁷ in this sense. *Manu* IX. 114 says that the eldest may get the best of all the items of wealth, whatever is the most eminent and the best of a group of ten cattle. *Bṛ.* (S. B. E. 33 p. 371 verse 8) is to the same effect. *Kauṭ.* III. 6 points out that according to *Usanas* among the sons born of the same mother, goats shall be the special share of the eldest among *brāhmanas*, horses among *ksatriyas*, cows among *vaiśyas* and sheep among *sūdras*, that if there be no quadrupeds the eldest was to take an additional share of one-tenth of the whole property excepting precious stones, since he releases his father from fetters (of Hell) by offering *śrāddha*. *Kauṭ.* himself holds that the eldest should get the vehicle and ornaments of his father (after the latter's death); the middle-most his bed, seat and the bronze plate from which the father took his meals; and the youngest should get black grain (like sesame),

1186. Compare the Vedic passages about the three debts owed to gods, ancestors and sages quoted in II. of Dh. vol. II. pp. 270 (n. 621), 423 (n. 1008), 569 (n. 1102).

1187. मनुः पुत्रेभ्यो द्वापं श्रेष्ठमदिति श्रुतिः । सप्तशः सर्वेषामपिशेषात् । वरं वा श्रेष्ठ-
सुद्धरेण्यपेक्षः । तस्मादपेक्षं पुत्रं श्रेष्ठं निरवसावयन्तीति श्रुतिः । वी. प. सु. II. 2. 2-5. निरव-
सावयन्ति is explained as श्रेष्ठमदिति by स्मृतित्वं. II. p. 260 and *आप.* also
(II. 6. 14. 1) employs the words एकश्रेष्ठेन उपेक्षं श्रेष्ठमदिति (having satisfied the
eldest by giving him an excellent article of wealth). नि. १. p. 467 explains
उपेक्षं पुत्रं श्रेष्ठेनोद्धरेण्यपेक्षेन निरवसावयन्ति इति उपेक्षः पुत्रं कुर्वन्ति.

iron, domestic utensils and the bullock cart. *Hārīta*¹¹⁸⁸ says: "at a partition the eldest should get a bull, the most precious wealth, the images for worship and the ancestral house, the other brothers should go out and build new houses or if there be a single house the eldest should get the southern (or best) portion". This special allotment to the eldest is called *uddhūra* (lit. what is first taken out) in *Manu* IX. 115-116 and *Vaspu Dh.* S. 18. 37, and *Baud.* employs the form "*uddharet*". There were other methods also prescribed for special distribution of wealth. *Gaut.* 28. 5 says that the eldest should get one-twentieth of the whole as a special share, a bull and a cow, a cow, a chariot to which horses, asses or mules are yoked and a bull. *Manu* IX. 112 provides that the special share of the eldest was one-twentieth of the whole property and whatever was the most valuable out of the ancestral property, the middlemost son should get half of this (i. e. one-fortieth part) and the youngest one-fourth of this (one-eightieth of the whole). *Manu* IX. 117 states that when no valuable items are taken out for the eldest the latter should get two shares, the son next to him one share and a half and the other sons one share each. *Vas.* 17. 42, *Nār.* (*dāyabhāga* 13), *Br.* (S. B. E. vol. 33 p. 371 verse 9) also give two shares to the eldest, the latter¹¹⁸⁹ making it to depend on the possession of learning and good qualities by the eldest. Similarly *Nār.* (*dāyabhāga* 12), *Br.* (S. B. E. vol. 33 p. 370 verse 5) provide¹¹⁹⁰ that when the father makes a division during his lifetime he may retain two shares for himself. *Śaṅkha-Likhita* allowed this right to the father only when he had an only son.¹¹⁹¹

1188. विभक्तिप्रमाणे यदा समूहे वृषभमेकधनं वरितं वा ज्येष्ठाय वृषद्वैवर्ता यदं च इतरे निष्कम्पं कुर्वतः । एकस्मिन्नेव दक्षिणे ज्येष्ठायानुपूर्व्यमितरेषाम् । हारीत q. by वि. र. p. 471. Vide *Damodaradas v. Uttamram* 17 Bom. 271, 288, for the eldest son being given the custody of the family idol and the property appertaining to it.

1189. जगन्विद्यालुणज्वेष्टो व्येष्टो दायादुषाप्सुवाम् । सर्गांशभागिसत्त्ववे तेषां पितुः समस्तु सः ॥ बृह. q. by दायभाग II. 42 p. 42, वि. र. p. 420, स्मृतिच. II. p. 266, परा. म. III. p. 490. उपबृहदारण्यक quotes first half as कृत्यायामास (p. 218).

1190. जीवद्विभागे तु पिता दक्षिणांशपुं स्वयम् । बृह. q. by दायभाग II. 35 p. 36, स्मृतिच. II. p. 261, व्यव. वि. p. 414, व्यव. न. p. 444, वि. र. p. 465.

1191. स पक्षेकपुत्रः स्याद्वा द्वौ भाग्यावामनः कुर्वाण । दक्षुल्लिखित q. by वि. र. pp. 465, दायभाग II. 39 pp. 47-48, अपराक्ष p. 717 (attributes to दक्षु.). The दायभाग does not take the word एकपुत्र as a वस्तुतोदि but explains it as meaning एकस्य पुत्रः (i. e. ओरस and not क्षेत्रज्ञ), while स्मृतिच. explains it as वसितव्यस्य, वि. र. p. 466 says 'पारिजातस्तु एकपुत्रः ज्येष्ठपुत्र इत्याह । भाग्यकारस्तु पुत्रज्ञानेन पक्षित्वम् । पक्षेकाक्षी स्यादिति पठितवान् । पक्षेकाक्षी पक्षीविरहितोपि स्वात्तदाप्यंशद्वये दक्षिणाया । सपार्वीक्षेनामप्यपरिणामेन शेषस्तु । २. The भाग्यकार seems to be that of the दक्षुल्लिखितपुत्र. The मदनमुरारि (folio 91 b) refers to पारिजात's explanation (एकशब्दोऽत्र क्षेत्रिकाक्षी). The व्यव. न. p. 444 criticizes दायभाग.

In course of time there was a revulsion of popular feeling against allowing a special share to the eldest son and even to the father. *Kāt.* (838)¹¹⁹² states that where the parents and brothers divide the whole joint property in equal shares that is a just (or legal) division. *Br.* (S. B. E. 33¹¹⁹³ p. 370 verse 2) declares that the father and sons are entitled to equal shares in lands and houses that are ancestral, but in property acquired by the father the sons cannot claim a share against the will of the father. The *V. M.* (p. 95) remarks on this that it follows impliedly that in the wealth acquired by the grand-father or other (remoter) ancestor, the sons can demand a partition even against the father's desire.

According to *Manu* IX. 125,¹¹⁹⁴ If all wives of a person are of the same caste, then the son who is born first (even from a wife who is junior i. e. married later) is the eldest son and that among twins the one that is born first is the eldest (verse 126), just as in the *Subrahmanya*¹¹⁹⁵ texts the invocation of *Indra* is made by the name of the first-born. But if he has wives of different castes then the son of the wife of his own caste is the eldest (though born later) and the son of a wife of a lower caste though born first would be postponed. *Devala*¹¹⁹⁶ quoted in *V. R.* p. 477 and *V. C.* p. 128 says the

1192. सकलं द्रव्यजातं पद्मार्ज्यैर्हन्ति तत्समैः । पितरौ ब्राह्मणैश्च विभागो धर्म इत्यनेन ॥ कात्या. 838 q. by स्मृतिच. II. p. 260. मदनमल (folio 91 b), च. मयूख p. 98, च. प. p. 448 which last remarks 'मदनमलभूतकात्यायनवचनांशु सर्वेषां धनुषां पितादुताणां च समंशयणमेव मुख्यमिति गतीयते. ... अत एव योगीश्वरोपि सर्वं वा श्चुः समंशितः इति सर्वार्थं यादृक्क. । अथवा समंशितो वा कुर्वति सुतानिति वदेत्. '

1193. कन्यायते सुपतेने पितादुताः समंशितः । पैतुके न विभागार्हाः सुताः पितर-निच्छन्ता ॥ बृह. q. by च. मयूख p. 95 which adds 'अर्थात्पितामहासन्निते तद्विच्छन्तापि विभागार्हा इत्यर्थः. '

1194. सपुत्रस्त्रीषु जातानां पुत्राणामपि शेषतः । न मातुलो ज्यैष्ठ्यमस्ति ज्यन्तोऽप्येष्टता मता ॥ स्मृ. IX. 125; the *वि. चि.* p. 125 after quoting this verse remarks 'तेन मानाणामपि भार्याषु ज्यैष्ठ्यमस्ति न पश्चाज्जातो ज्येष्ठ इत्यर्थः. ' and निर्णयसिन्धु III. पूर्वार्धे p. 251 says 'तेन कनिष्ठायां पूर्वजात एव ज्येष्ठो न ज्येष्ठार्या पश्चाज्जात इत्यर्थः. '

1195. For *Subrahmanya*'s invocation, vide H. of Dh. vol. II pp. 1144-45 and note 2550 as to how the names of descendants by the seniority of birth are included in that invocation.

1195a. बहिर्जनेषु चास्त्रियाद्यस्योः पूर्वजन्मतः । परस्य जातस्य धर्मयोः परपन्ति प्रधानं मुख्यम् । सप्तानां पितरश्चैव तस्मिन्ज्यैष्ठ्यं प्रतिष्ठितम् । देवल q. by *वि. र.* 477. *वि. चि.* p. 128, निर्णयसिन्धु III. पूर्वार्धे p. 251. The वैजयन्ती on *विष्णुधर्मसूत्र* 18. 37 correctly points out that the word इति तद्वा भवतो यमो धृतिर्गतिपर्वणात् are quoted by *Sekhara* (in his comment on the *आनन्द*).

same as Manu IX. 125. Manu IX. 123 and Gaut. 28. 16 appear to conflict with Manu IX. 125 and probably refer to some other ancient text or opinion. The V. Mayūkha (pp. 97-98) notes that in some medical works and in the (commentary on the) Bhāgavata Purāṇa III. 17. 18, it is said that among twins the one born later is deemed to be the elder, but that this, being opposed to the indications contained in the Vedic Subrahmaṇya formula and in Manu IX. 126, has no bearing here (but only in medical matters). The Nirṇayasindhu (III Pūrvārdha p. 251) makes a reference to the Bhāgavata.

General feeling went so much against allowing a special share to the eldest or allowing the father to make an unequal division among his sons, that such action was condemned in the same breath with *niyoga*,¹¹⁹⁶ or the sacrifice of the cow called Anubandhyā. It is very instructive to follow the arguments of the Mit. and other writers on this point. The oldest extant commentator, Medhātithi, on Manu IX. 112 shows that even before his time there were writers that held that the texts of Manu on *niyoga* and on the special share to the eldest at a partition were in vogue only in bygone days and not in their days, that the rules of the smṛtis were conditioned by time and country, just as *sūtras* of long duration, though declared in the Vedic texts committed to memory by Vedic students, were not being performed and just as Manu (I. 85) declares that the dharmas were different in different *yugas*. But Medhātithi¹¹⁹⁷ does not accept this reasoning, denies that different dharmas are prescribed for different *yugas* and holds that there is no restriction as to the dharmas to be performed in a country. Though *sūtras* may not be performed now still it is possible to perform them. The argument of the Mit. on Yāj.

1196. For *niyoga* vide H. of Dh. vol. II pp. 599-607. The anubandhyā (or anūbandhyā, a barren cow) was sacrificed after the *Udyanīya* *ṛṣi* performed at the end of the Agnīṣṭoma. Even in the times of the *sūtras* (such as Āp. Śrauta XIII. 24. 10 and Kāt. Śrauta X. 9. 14-15) *amīkṣā* (curds mixed in heated milk) was optionally offered. Vide. H. of Dh. vol. II. pp. 1200-1201.

1197. इयमुद्धारनिर्णयस्तुतिरिति कालकालविषयः न ज्ञाते । अतुल्ये निषक्तकाल-
व्याप्तुतीर्णमिति किञ्चिद् । ... तस्मादुद्धारनिर्णयमेषस्तुतय उपदिष्टा नावुत्तेषाः । तदे-
तदपेक्षतः । मेधातिथि on मनु IX. 112.

IL 117 is briefly as follows¹¹⁹⁸ :—Unequal division though found in the śāstras (e.g. Manu IX. 105, 112, 116, 117, Yaj. II. 114) should not be practised because it has come to be condemned (or has become hateful to) by the people, since there is the prohibition (in Yaj. I. 156) that an action, though prescribed in the śāstras, should not be performed when it has come to be condemned by the people, since such an action does not lead to the attainment of Heaven. For example, though Yaj. I. 109 prescribes the offering of a big ox or a goat to a learned brāhmaṇa guest, it is not now practised because people have come to hate it; or just as, although there is a Vedic text laying down the sacrificing of a cow "one should sacrifice a barren cow called anubandhyā for Mitra and Varuṇa", still it is not done because people condemn it. And it has been said "just as the practice of *nirapeya* or the killing of the anubandhyā cow is not now in vogue, so also division after giving a special share (to the eldest son) does not now exist". Āpastamba also (II. 6. 14. 1-14) prescribes equal division, refers to the view of some that the eldest takes the whole estate, shows that allotting a special share to the eldest is the view of some and refutes it as opposed to the śāstras by quoting the Vedic text "Manu divided his wealth among his sons". Therefore unequal division though found in the śāstra should not be practised as it is opposed to popular sentiments and to the Veda and so Yaj. (II. 117) gives the restrictive rule that in partitioning there must be equal division. The Sm. C. (II. p. 266) tells us that Dharmśvara also did not discuss passages like Manu IX. 112 since he said that the practice (of *uddhāravibhāga*) had been altogether given up by the people¹¹⁹⁹.

1198. अथ विधमो विभक्तः शास्त्रद्वयस्यापि लोकविद्विष्यत्याशुतेयः । अथर्वं लोक-
विद्विष्यं धर्ममप्यचरेत्तु इति निवेद्यत् । यथा-महोक्षं वा महार्जं वा ओजिष्यापोकल्पयेत्-
इति विधानेपि लोकविद्विष्यत्यादुनमुक्तम् । यथा वा-मेवावकर्षो वा वशामनुवर्ष्यामातमेत-
इति यथाहम्भनविधानेपि लोकविद्विष्यत्यादुनमुक्तम् । उक्ते च-यथा नियोगधर्मो नो मातु-
वर्ष्यावर्ष्यापोपि वा । वयोद्धारविभागोऽपि नैव संभति वर्तते इ-इति । ... तस्माद्विधमो विभागः
शास्त्रद्वयोपि लोकविरोधाच्छ्रुतिविरोधाच्च मातुतेय इति सममेव विभक्तेरभिति निदग्मते । मिता.
on Ya. II. 117. The verse यथा नियोगः is attributed to the स्मृतिसंग्रह by the
मदनमल (folio 92a) and च. म. p. 443 and to the संग्रह by स्मृतिच. II. p. 266
which reads 'धर्मोद' and explains अथसंयतिज्ञायां कलिदुषमनिसन्धाचोको. The
च. म. नि. p. 414 ascribes it to यज्ञापति, the दश. म. III. 422, चक्रहारसार p. 219,
and others attribute it to संग्रहकार.

1199. एतदेव धर्मेश्वरेणोक्तम् । उदेहरय विभं उद्धार इत्येवमादिति वाक्यानि न विधा-
र्यन्ते लोकेनात्यन्तपरिपक्वतात् । कलापितं शेषः । द्वापरयुगादुपदेवतेनाद्यन्तपरिपक्वतात् । वात् ।
स्मृतिच. II. p. 266.

The Sm. C. finds fault with Viśvarūpa for saying that just as the offering of an ox or a goat to a learned brāhmaṇa is not practised because the practice of the śiṣṭas is against it, so uddhāra is not practised. It says that when there is a conflict between a smṛti text and śiṣṭācāra, the latter is the weaker (of the two) and cannot refute the smṛti text as laid down by Vas. I. 4-5. Further not offering a bull cannot be said to be śiṣṭācāra, but it is really the absence of śiṣṭācāra. The Sm. C. finds fault with the Mīt. for saying that people have come to condemn a special share for the eldest. It says that, on the contrary, if a special share is given to the eldest who is endowed with learning, good qualities or holy actions then people commend such a procedure. The Madanaratna¹²⁰⁰ quotes the verse "yathā niyoga &c.," and a verse from the Ādiparāṇa. The V. P.¹²⁰¹ (pp. 442-443) generally follows the Mīt., but criticizes it by saying that there is no real śruti-virodha (opposition to a Vedic text). If that were so, as śruti (the Veda) is promulgated for all ages, unequal division would be forbidden in all ages and it would follow that the particular śruti passages speaking of

1200. एवमादीनि विषयविभागवर्तिपादकानि मन्त्रादिवचनानि कस्मिंश्चिदतिरिक्त-
विषयाणि । अत एव कलौ विषयविभागनिषेध आदिपुराणे । उद्वापाः पुनश्चाहं नृपेडांशं वाचये
तथा । कलौ यत्र न पुराणि श्रुतवाचां कमण्डलुम् ॥ नृपेडांशे जम्भविषादिहृतगैड्यनिबन्धन-
मंशम् । स्मृतिसंघेपि । यथा नियोगधर्मो ... संप्रति वर्तते ॥ इति । संप्रति कलियुगे । मदनराज
(folio 92 a). The verse उद्वापाः is quoted in the Sm. C. (II. p. 266) also
from a पुराण (without naming it). Rao Bahadur Rangaaswami Aiyangar
(in Introduction to V. Nir. XLIX-LI) wrongly thinks that by स्मृतिसंघः is
meant the स्पष्ट. नि. of वरदराज which quotes the verse यथा नियोगधर्मो नो from
प्रजापति. He failed to note that the verse यथा नियोगधर्मो नो &c. is quoted by
the Mīt. on Yāj. II. 117, the Mītākara being one of the authorities quoted in
the V. Nir. Therefore the स्मृतिसंघः from which the verse is said to have
been taken is the work of that name also called संघः.

1201. अस्वत् लोकविहितं धर्म्यमप्याचरेत्तु । इति योगीश्वरचनान् । अत्र लोक-
पदेन पुनश्चर्यते । पुनान्तरे धर्म्यमपि पुनान्तरे पद्धिद्विधं पतिविज्ञं तत्ताचरेदित्यर्थः । अथवा
धर्म्यत्वात्स्वर्गैतयोर्भावात् । शास्त्रविहिते तदभिज्ञविहितो वाधित एव । तदनुभिज्ञयामरजन-
विहितस्तु नास्वर्गत्वापादकौऽप्यौ योगीश्वरादिहिंसादातविप्रसङ्गादित्यादि दूषणं स्यात् । स्प. य.
p. 442. It should be noted that निम्बकः reads the verse of Yāj. as अस्वत्
लोकविहितं and takes अस्वत् as (अ + सु + अत् past p. participle of अद्)
'अस्वत्तम् अद्युगतम् । अनुपदिनिश्चितमित्यर्थः'. He then notices another reading
अस्वन्तं which means अशोभनात्मम् (not bringing about welfare in the end). He
further explains 'लोकं कर्मसाधनं ये जानन्ति ते लोकविदो मन्त्रादयः तैद्विधं नाचरेत्'.

unequal division are without authority, since it (unequal division) could not have been practised in other ages also (but as a matter of fact it was); besides Baud. sets out another Vedic text which mentions unequal division. The V. P. desiring to guard against the rather wide statement that whatever is condemned by the people should not be practised holds that the word "loka" in Yāj. I. 156 means "yuga"; otherwise there would be confusion about what is proper conduct and what does not lead to Heaven. The condemnation by low or ordinary people who are quite innocent of śāstras cannot make an action incapable of leading to Heaven, since such people might condemn the *hiṃsā* (slaughter) of the animal offered to Agni and Soma. The above discussion illustrates how practices once recognized by Vedic passages and by the people gradually fell into disuse and how reason and the common sense of ordinary people asserted themselves even against Vedic and smṛti texts. The Mī. is very clear in its statement that whatever comes to be hated by the people in general should not be practised, even though it was once practised and has the support and authority of Vedic and smṛti texts behind it. Those who desire change in social customs and the practices of the people in various directions rely on this text of Yāj. and on similar texts¹²⁰² of Manu IV. 176 and Viṣṇu Dh. S. 71. 85 and on the Mī. for authority. Orthodox writers like Mitrāmīśra therefore have to twist plain words like "loka", since they cannot tolerate the idea that common people can have anything to say in what these writers believe to be the injunctions of the śāstra. Instead of candidly saying that ancient practices came to be modified by common people, writers like Mitrāmīśra say that common people should not be listened to in these matters, that each *yuga* has its own peculiar practices and that common people have no authority to change śāstric practices prescribed by the texts for a particular age. It is sheer quibbling to say that not offering a bull is not *aiśtācāra*, but absence of *aiśtācāra*; what is clear is that common people abhorred the practice of *niyoga* and the killing of a cow in a sacrifice and writers of sūtras and smṛtis fell into line with them and prohibited such practices in the

1202. परिहर्तव्यदर्शकानो यो रथास्तं धर्ममिति । धर्मं चाप्यनुसोदकं लोकनिवृत्तमेव च ॥ मनु. IV. 176; धर्मविक्रयी चार्थकामो । लोकनिवृत्तिं च धर्ममपि (परिवरेत्) । विश्वधर्म-सूत्र 71. 84-85; जनघोषं मतिं ह्युदकारं न कुर्वत् । बार्हस्पत्य-अर्थशास्त्र 1. 95.

Kali age, though they were either permitted or (even) enjoined by the Vedic texts: that is, the voice of the common man or his revolt was allowed to prevail over the word of the sacred Veda.

Though the assignment of a larger share to the eldest son or giving him the whole property ceased to be generally prevalent, vestiges of it are still found. There are certain estates in the nature of *condominies* or a *rāj* that are impartible and descend by the rule of primogeniture to a single heir. Vide *Baboo Gunesb Dutt v. Maharaja Moheshur* 6 Moo. I A. 164, *Neelkanto v. Bess Chunder* 12 Moo. I. A. 523, *Mohesh v. Satrugshan* 29 I. A. 62, *Ram Nandan v. Maharani Janki* 29 I. A. 178 for examples of impartible estates. Sometimes by custom certain estates such as *Deshmukh* and *Deshpande rāns* have been held to be impartible. Vide *Ramrao v. Yeshwantrao* 10 Bom. 327 and *Gopalrao v. Trimlakrao* 10 Bom. 598. In certain other cases a larger share (called *jyēsthāhā* or *māp*) has been allowed by custom to the eldest son at a partition. Vide *Manikchand v. Hirald* 20 Cal. 45 (P. C.), *Prithisingji v. Umedsingji* 6 Bom. L. R. 98, *Malubhai v. Sursingji* 7 Bom. L. R. 831.

The following propositions may be laid down about the allotment of shares on a partition: (1) When there is a partition between a father and his sons each son takes a share equal to that of the father; (2) where the partition is only between brothers all of them share equally; (3) on the death of a member leaving male issue his right to a share on partition passes to and is represented by his male issue; (4) when there is a partition among members who are uncles and nephews or cousins, the allotment is *per stirpes* (according to the stock) as regards each branch and *per capita* among the members of the same branch. This rule is expressly laid down¹²⁰³ by Kaut-

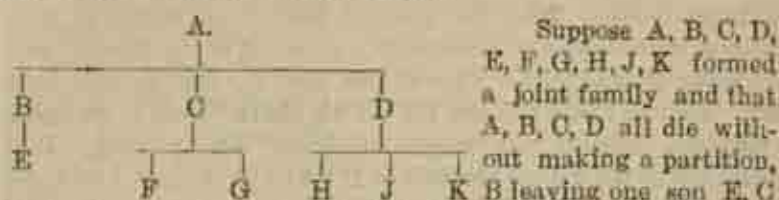
1203. अपितुका वधोपि च ज्ञातये ज्ञातुव्याच्य पितुरेकमेव हरेत् । सोऽप्योपामनेक-
पितृकाणां पितुतो द्वापविभागः । अर्धेऽंशः III, 5 : अनेकपितृकाणां तु पितुतो मायकल्पना ।
पा. II. 120. This is read as प्रतीतपितृकाणां in the स्मृतिच. II p. 278, एव. प. p. 449
and a few other digests. Vide n. 1068. सन्नेकेषु पत्न्यासु सर्वे त्व समंशिनः । तदुवा
विषमसम्याः पितृभागद्वयः स्मृतः ॥ बृह. q. by अपराकं p. 727, स्मृतिच. II. p. 278,
एव. नि. p. 424, नि. र. pp. 421-52; अविभक्तेऽप्युते येन तत्पुत्रे विषमभागिनम् । कुर्वीत जीविने
देन तस्यैवैव पितृभागद्वयः ॥ लभेतांशं स पित्र्यं तु पितृव्याचस्य वा मुनात् । स एवोऽप्यसु सर्वेषां
आपुण्यां ग्यापतो भवेत् । लभेत तदुक्तो वापि निवृत्तिः परतो भवेत् ॥ कात्या. q. by अपराकं
p. 727, स्मृतिच. II. p. 278, नि. र. p. 482, एव. n. p. 449. These verses are

III. 5., Yāj. II. 120, Br. (S. B. E. 33 p. 372 v. 14) and Kāt. (855-56). This last rule requires to be explained and illustrated. Yāj. II. 120 concisely states: "in the case of those who claim through different fathers, the assignment of shares is according to the fathers". Kāt. says: "if an undivided younger brother dies, he (the elder brother or the other brother) should make the son of the former a partaker of the ancestral wealth, when he has not obtained from his grandfather livelihood (i. e. share of heritage); he should obtain from his paternal uncle or the uncle's son the share which his father would have got (if alive); that very share would be the share according to law of all the brothers (who are the sons of the deceased brother). Or even a son (of that son of the brother dying) would obtain that share; beyond this (i. e. beyond the grandson of the deceased brother) there is cessation (of the right to demand a share)". It was stated that in the ancestral property (*pitṛānaha dravya*) sons and grandsons equally have rights by birth, but in the case of the grandsons assignment of shares is made to them through their

(Continued from the last page)

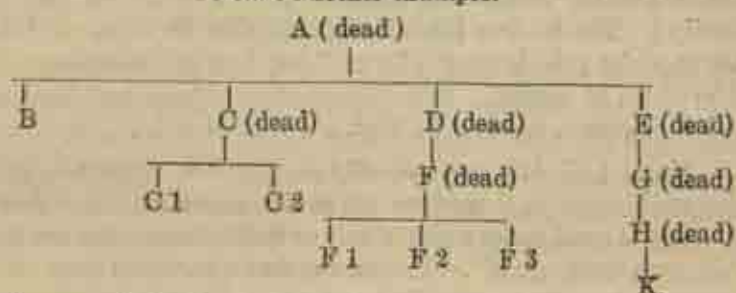
lucidly explained in *Moro v. Ganesh* 10 Bom. H. C. R. 444 (at pp. 461, 466-67) and are quoted in *Debi Parashad v. Thakur* Dīal 1 All. 105 (F. B.) at p. 111. On these verses of कात्यायन the स्प. सप्रुष (p. 101) says that they do not refer to undivided coparceners, but rather to those who are re-united. Why it says so is not clear. The first verse of Kāt. starts with the words अविभक्ततुत्रे and therefore the topic is that of undivided family and there is no express indication that it has changed to reunion in the following verse. The reason appears to be that नीलकण्ठ takes the verse of देवद 'अविभक्तविभक्तानो कुलपानां वसतां सह । पुत्रो दापयिभागः स्यादाचतुर्धां विदिति स्थितिः' as referring to re-union on account of the word पुत्रः in it. The words आचतुर्धात् (in देवद) and निवृत्तिः परतो भवेत् (in कात्यायन) mean the same thing and so नीलकण्ठ probably thought that they referred to the same subject. The interpretation of देवद (by नील) is forced and is opposed to the explanation of most works like the विशद्वल्गाकर (p. 482) and स्प. म. p. 449, स्मृतिच. II. p. 279. They take अविभक्तविभक्तानो as a *dvandva* compound meaning 'those who are undivided' and 'those who are divided', while नील takes that word to mean 'those who being once undivided are divided' (i. e. as a कर्मधारय). सह वसतां—acc. to the other digests means either 'who dwell together' (in the case of the undivided) and 'who reunite' (in the case of the divided). 'अविभक्तानामेव वा विभक्तानां सह वसतां संघटनं वा पुनर्विभागो धातुतत्प्रातःपुनर्पन्तमेव तत्पुनराचतुर्धांश्चितं इति' नि. र. p. 482; नीतिचतुर्धमभिप्राय दापयाम इत्यर्थः । विभक्तानामपि सप्तर्षादिना सहवासो सति इयं व्यवस्था । वसतां सहेति वचनात् । स्प. म. p. 449. Vide *Moro v. Ganesh* 10 Bom. H. C. R. p. 444 at pp. 463-468 for several objections to the explanation of Devad's verse offered by Nīlakantha.

fathers and not in their separate individual capacity. This may be illustrated by some examples.



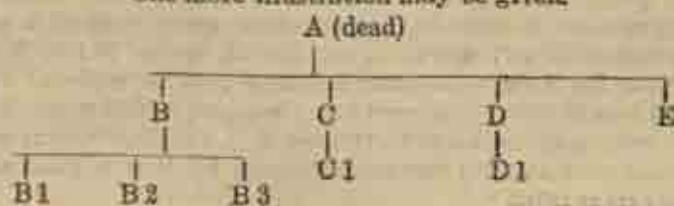
Suppose A, B, C, D, E, F, G, H, J, K formed a joint family and that A, B, C, D all die without making a partition, leaving one son E, C leaving two sons F, G, and D dying leaving three sons H, J, K. If E, F, G, H, J, K want to partition, then these six will not take one-sixth each, but the partition will be through their fathers i. e. E the only son of B will take one-third, F and G (the two sons of C) will take one-third (i. e. each will take one-sixth) and H, J, K will together take one-third (i. e. one-ninth each). The same will be the result if only A, B, C die, leaving D to K. Here D, the uncle of E, F, G, along with his three sons H, J, K will take one-third only.

To take another example.



Suppose A the head of the joint family dies leaving a son B, two grandsons C1 and C2, three great-grandsons F1, F2, F3, and one great-great-grandson K. Here K cannot demand a share, as he is beyond 4th from A the common ancestor A that died last. Therefore the joint property will be divided *per stirpes* into three parts, B taking one-third, C1 and C2 together taking one-third and F1, F2, F3 together taking one-third.

One more illustration may be given.



Suppose A, the head of a Hindu joint family, dies leaving four sons, B, C, D, E and five grand-sons, B 1, B 2, B 3, C 1, D 1 and then B dies. Then B 3 receives his share, which is one-third of one-fourth (= one-twelfth), goes out of the family and the rest continue joint. Then C dies, then D, then E, and then B 2. Then B 1 sues C 1 and D 1 for his share. Here if we again apply the rule of *per stirpes* division, the property that remained at the date of the suit of B 1 will be divided into three parts and B 1, C 1 and D 1 (who represent three stocks, B, C, D) will each get one third of that property. This was so decided in *Pranjudas v. Icharam* 39 Bom. 734. The Madras High Court, however, holds that the rule of *per stirpes* applies only when all the coparceners desire a partition at the same time and that if only some members separate at one time and others on a later occasion, regard should be had to the share allotted at the first partition in computing the share to be allotted at the second partition. That is, according to the Madras High Court in the above case B 1 will be entitled to one-third minus one-twelfth (which latter was allotted to B 3 when he left the family). The Madras High Court says that its views are based not on strict principles of Hindu Law, but on necessary considerations of equity. Vide *Manjanatha v. Narayana* 5 Mad. 362 and *Narayana v. Shankar* 53 Mad. 1 (F.B. at p. 6).

Manu (IX. 47) emphatically states:^{1203a} "once is a partition made, once is a maiden given in marriage, once does a man say 'I shall make a gift of this or that'; these three are done only once by the good". This means that a partition once made is final and cannot ordinarily be reopened. But there are exceptions to this rule. One viz. about the posthumous son born after partition has already been mentioned above (pp. 595-597). Br.¹²⁰⁴ (S. B. E. 33 pp. 373-74 verses 24-26) says, "If a man

1203a. सङ्कुर्वीशो निपतति सङ्काक्या गदीपले । सङ्कुदाहं द्वादशीति वीर्येतामि सतां
सङ्कुदं ॥ मनु IX. 47 which is the same as भारद् (वीर्यसयोग 28) and
यनपर्व 294, 26.

1204. गोत्रसाधारणं त्वत्त्वा योग्यदेशे समाहितः । तद्वैश्यपरपातनराशः पदात्तयो
न संशयः ॥ तुलीयः पञ्चमथैव सतमो वापि वो भवेत् । जन्मनामपरिज्ञाने लभेतांशं कमायतम् ॥
ये परम्परया मोलाः सामन्ताः स्वामिनं विदुः । तद्वैश्यपरपातनराशं दातव्यं गोत्रजैर्मही ॥ बृह.
q. by दापभाग VIII. 2-3, स्मृतिच. II. pp. 307-308, दापतत्त्व p. 180, वि. २,
pp. 540-541. The वि. वि. p. 132 seems to ascribe these to कात्यायन. For
मोलाः vide वे तत्र पूर्व सामन्ताः पञ्चदशान्तरे मताः । तन्मूलवापु ते मोला जातिभिः से-
वीकृताः ॥ कात्या. q. by स्मिन्, on वा II. 131, अपराधं p. 760. Kāt. derives मोल
from मूल and states that they were once neighbours but later migrated and
hence they are so called.

leaving the country common to himself and his co-sharers goes to another country, his share must undoubtedly be given to his descendant when the latter comes back to the original country. Whether he (the descendant) be the third or fifth or even seventh in descent (from the man who left the country) he would get the share that descends hereditarily provided his birth and family name are ascertained. The *gotrajas* (agnatic members of the family) should allow (a share in the ancestral) lands to the descendant of a man whom the *manus* and neighbours know to be a co-owner (in the lands) by descent, when he comes (after a partition) to demand his share". The V. R. explains¹²⁰³ that the rule of Devala (given above) about a claim to a share being allowed up to the fourth applies when all the members stay together in the same place or country, while the above rule of Br. allowing even the seventh in descent to claim his share after a partition has taken place applies where such descendant and his forefathers had migrated to a distant land. These rules of Br. indicate that, even after a long time, a descendant could claim his share in a joint family estate and no bar of limitation was allowed.

Another rule is that where some property of the joint family had been fraudulently concealed by one member and was discovered afterwards, or where some property was left out from partition either through mistake or accident, such property should be divided according to their shares among the persons who made the first partition. In this case there is no reopening of the partition once made, but there is another partition. Manu IX. 218, Yaj. II. 136, Kauṭ. III. 5 and Kat. 885-86 lay down¹²⁰⁶ this. Kat. says: 'If (joint) wealth was concealed, but

1203. यत्ना चतुर्धाद्विभक्तविभक्तानामिवादिदेवभोजनियमः स सप्त/सादौ । अथ
तु दूरदुर्मिगसादाविविधोऽयः । वि. र. p. 541. The स्मृतिच. II. p. 308 states that
the last verse applies only to lands (i. e. a partition can be reopened only
as to immovable property). तद्वत्तु चिरयोचितवदेन समन्ताद्वासेभिर्नोत्तरामङ्गा-
पनपूर्वकं भागवद्वत् कार्यम् । द्वापभाग VIII. 4. Compare Art. 127 of the Indian
Limitation Act.

1206. पुर्विभक्तमन्योन्वापहतमस्तर्जितमविज्ञातोत्पन्नं वा पुनर्विभजेत् । अर्थशास्त्र
III. 5; पञ्चादितं यदि धनं पुनरासाद्य तत्समम् । भजेत्तु प्राप्तिः सार्धमनवि द्वि पितः पुत्राः ॥
अन्योन्वापहतं पुनर् पुर्विभक्ते च पद्धते । पञ्चाधारे विभजयेत् समभागेन तद्वत्तु ॥ कात्या.
883-886 q. by अपराके pp. 732-733 (which reads last half as पुनर् नष्टं च यत्तु
माहृतं च पुनर्भजेत्), स्मृतिच. II. pp. 308-309, द्वापभाग XIII 4. p. 221, वि. र.
326. विभजेन्निति वदता येन दृश्यते तेनैव न द्वाधमिति दृष्टितम् । मिता. on वा II. 125;
पूर्वं यथा यथ विभाजकल्पना कृता तत्समस्यैव कार्यं न पुनरपहर्षणवर्तुनवा अन्यभागे
दातव्यो न दातव्य एव वेति समता न्येदित्यस्वार्थः । द्वापभाग XIII. 2.

is afterwards discovered, the sons should divide it equally with their brothers in the absence of the father (i. e. even after his death). Whatever is concealed from each other (by the co-sharers) or what was divided in an unjust manner and whatever was recovered (such as debts) after (partition) should be partitioned in equal shares. This is the view of Bhṛgu'.

In the Ait. Br. (VI. 7)¹²⁰⁷ it is said: 'He who deprives a person entitled to a share of his share, him he (who is deprived) punishes (or destroys). If he does not punish (or destroy) him (the depriver), then he punishes his son or grandson; but he does punish him'. Manu IX. 213 declares that even the eldest brother who through greed deprives his younger brothers (of their shares) ceases to be the eldest (i. e. forfeits his position as the eldest), is deprived of his (special) share (as eldest) and should be punished by the king. From these passages it follows that fraudulently concealing joint property or depriving a person of his share is condemned. This leads on to a divergence of views among commentators and digests. If a man conceals joint property at a partition, is he a wrongdoer or not? What he conceals is partly his own. Therefore the *Dāyabhāga*¹²⁰⁸ (XIII. 8) holds that there is no theft in this case, since a thief is commonly understood to be one who knowing that some thing belongs to another, makes it his own without any ground for so doing; while a co-sharer cannot be said to be no owner at all of the joint property. The *Dāyabhāga* (XIII. 11-12) says that *Viśvarūpa* and *Jitendriya* both held the same opinion that even if technically it may be called theft, still there is no sin attaching to it as smṛtis allow him also who conceals joint property to share in it at the subsequent partition. The *Vivādaratnākara* (p. 526) states that *Halāyudha* also held the opinion that in suppressing some joint property the co-sharer did not incur the sin of theft. On the other hand the *Mit.*, *Aparārka* (p. 732), V. P. p. 555 hold that in view of Manu IX. 213

1207. यो वै भागिनें नामागृह्यते चयते तेन स यदि तेन स चयतेऽथ दुष्कृत्य पीड्यं चयते त्वेवमिति । ते. मा. VI. 7. This is cited as मीमंसा in the *Viṣṇu*. on *ya.* II. 125, in the *vy. m.* p. 131. The *para. m.* III. p. 366, *sa. vi.* p. 438, *vy. a.* 353 correctly refer to it as *śūtri*.

1208. वदुःखे विचक्षतेऽपि । अगस्त्यकवेदो नामोति वचनारम्भनामधेयं श्लोकं । घालयोनित्यचेरित्यभिप्रायः । ... सत्यपि सा स्तेपेऽप्यहर्तुं विभागाच्चनदृशमात्रं श्लेषद्वयः । अथवा सुवर्णादिनिष्ठे पतितरप भागो न स्यात् । द्वाभ्याम् XIII. 11 and 12 pp. 224-225.

(which declares even the eldest as punishable by the king if he deprives his younger brothers of their due share) and the Ait. Br. there is the fault of theft. In case a co-sharer fraudulently conceals joint property, The Mit. and V. P. further rely upon an example derived from the Pūrvamīmāṃsā in support of their view. When a *caru* (boiled food) of *mudga* pulse is prescribed and *mudgas* are not available, some substitute must be employed just as when rice is not available *añḍra* grain may be employed. The parts of *māsa* resemble those of *mudga* and some one may plausibly say that in the absence of *mudgas*, a *caru* of *māsa* may be used. To this Jai. VI. 3. 20¹²⁰⁹ replies that, since *māṣas*, *varakas* and *koṭrukas* are forbidden as being unfit for use in sacrifices, one cannot take parts of *māsa*s as substitute for parts of *mudgas* though both may be so similar as not to be easily distinguishable. So the general prohibition against depriving another of his wealth holds good even in the case of goods that belong jointly to oneself and to others. The *Dāyabhāga* (XIII 16 pp. 227-228) tells us that a predecessor of it named *Bālaka* relied on this very *nyāya* of *Jaimini* and finds fault with him. It should be noted however that *Kāt.* (888) recommends that the king¹²¹⁰ even if a complaint be lodged about fraudulent suppression by a co-sharer should not use force against the fraudulent suppressor but should make him give up the concealed property by persuasion or trick. Br. and *Kāt.*¹²¹¹ declare that if there is a suspicion that some joint wealth has been concealed by a co-sharer, the *koṭa* ordeal may be resorted to.

1209. अतिविद्धं चाविशेषेण हि तत्पूरति । जै. VI. 3. 20 ; अप अतिविद्धं अत्र श्रिया वै वरकः कोदवाः अपश्रिया वै माषा इति । किं तत्पूरतद्व्यापचारे प्रतिनिधायकमुक्तमिति । किं ततः प्रतिनिधेयमिति । ... एवं अतः दूमः । अतिविद्धं च न प्रतिनिधायकमिति । अविशेषेण द्योतयुक्तं न वज्राग्निं माषा वरकः कोदवाश्चेति । वज्रसम्बन्ध एषां प्रतिविध्यमेव । शबरः, यथा मीढं चरी विपक्षे सहस्रतया माषेषु अपश्रिया वै माषा इति निषेधो न अविश्रान्तिमुद्गमयवज्रद्वया युक्तमात्रात्वादिति पूर्वविधेयैकमुद्गावपेषु युक्तमात्रेणैवर्ज्येतीत्यत्र माषावपनं अपि युक्तत्वं सूचति निषेधः अविश्रान्तेति सिद्धातिर्नोक्तम् । तस्माद्वचनस्य स्वापत्तयः साधारण-व्यापहारो दोषोऽप्येवेति सिद्धम् । मिता. on पा. II. 120.

1210. अश्रुतापहर्ते द्रव्यं बलाजैव प्रदाययेत् । कात्या. q. by व्यासभाष्य XIII. 7 (p. 222), व्यासभाष्य p. 183, वि. र. p. 326, स्व. य. 536 which says ' राज्ञे तु भोनिमिर्न निवेदनीये राज्ञे निवेदितमग्निं तेन सामाजिकेन व्यापनीयमिति भीष्मसिंह्येदादिदृष्टव्योऽयमकमेव '.

1211. एतौपरकरवाद्याश्च दोषाभरणकर्मिणः । दृश्यमाना विभक्त्यने कोशं गृहेऽब्रवी-द्वचमुः । कात्या. 842 q. by स्मृतिच. II. p. 273, वि. र. p. 498. The स्मृतिच. quotes a very similar verse of वृहस्पति (on the same page) viz. एतौपरकरवाद्याश्च दोषाभरणकर्मिणः । ... एते कोशो विधीयते ॥

If there was a dispute whether a partition had already taken place, Yāj. II. 149 mentions some of the indications that lead to the inference or proof of partition viz. 'the determination of the dispute follows from the testimony of kinsmen, cognates (like maternal uncle), other witnesses, a deed (of partition) and by (the fact of) houses and fields being separately held.' Nār. (dāyabhāga 36-41) gives more¹²¹² elaborate rules on the subject viz. that the status of division can be determined from the fact of their transactions (agriculture &c.) being separate, that the separate performance of religious rites is another indication of separation. 'Receiving and returning a debt, the beasts (kine &c.), food, houses and fields and servants must be separate in the case of those who are divided, as also cooking food, performance of religious rites, income and expenditure. It is only divided persons (and not undivided ones) that can become in respect of each other witnesses, sureties or debtors and creditors. People should regard them to be divided even though there be no deed of partition, in whose case these transactions are entered into openly with their co-sharers'. Yāj. II. 52 also declares that between brothers, husband and wife, father and son there cannot be, as long as they are undivided, the relationship of being sureties or witnesses for each other or of being debtor and creditor. Nār. (dāyabhāga 41) and Kāt. (893) state that when for ten years brothers (and other members of a family) reside (separately) doing religious observances separately and have separate transactions, they should be known as separate so far as the ancestral estate is concerned.¹²¹³ It is on account of these passages that the courts say that presumably every Hindu family is joint in food, worship¹²¹⁴ and estate and 'that cesser of commensality is an element which may properly be considered in determining the question whether there has been

1212. Vide *Debi Parshad v. Thakur Dalaj* 1 All. 105 F. B. (at p. 109) for the verse of Nār. about religious rites being single when there has been no partition.

1213. वसेषुर्वैश्वानरानि वृधगर्माः पृथक्क्रियाः । आतरस्येपि विज्ञेया निभन्ताः पैतृका-
ज्जातौ ॥ कात्या. १. १७. १. ॥ स्मृतिसं. II. p. 311, स. वि. p. 348, अपराज्ज्ञे. p. 727 (reads
वसेषुर्वैश्वानरानि and पैतृके घने). मारदु (दायभाग 41) ॥ वसेषुर्वैश्वानरादिभिः । निभन्ताः
आतरस्येपि विज्ञेया इति निभन्ताः ॥ In *Lalubhat v. Bai Anant* 2 Bom. 299
(at p. 309) the verse of Kāt. is referred to.

1214. Vide *Sri Raghunadha v. Sri Brato Kishore* L. R. 3 I. A. 134 at p. 191.

a partition of joint family property, but it is *not conclusive*.¹²¹⁵ Br. says that where there are no witnesses nor a document to prove partition, a conclusion may be arrived at by inference.

A few words may be said about the self-acquired property of the father or grand-father. According to the strict theory of the Mit. the son¹²¹⁶ acquires by birth an interest even in the self-acquired property of the father, but the Mit. makes it clear that the son has no power to prevent his father from disposing of his own self-acquisitions, but has to give his approval to his father's alienations of his self-acquisitions. The Mit. sets out two smṛti texts viz. 'though immovable property and bipeds may have been acquired by the father himself, there can be no gift nor sale of them without (calling together or) consulting all the sons. Those that are born, those that are unborn and those that are in (their mother's) womb expect maintenance (and therefore) there can be no gift nor sale'. But these have been treated by the Mit. and the Dāyabhāga also as more or less recommendatory. If the father alienates his self-acquisitions without his son's consent he may be held guilty of transgressing a smṛti precept but the transaction does hold good and is valid,¹²¹⁷ since a fact cannot be altered by even a hundred texts (as the Dāyabhāga puts it). It should not be supposed that the Mit. was the first to propound this right as to self-acquisitions. Centuries before, the Viṣṇu Dh. 8, 17, 1 expressly declared that as regards self-acquired property the father has absolute discretion to divide it as he pleases.

1215. Vide *Ganesh Dutt v. Jewach L. R.* 31 L. A. 16 at p. 13. मातुर्न स्वायत्तः स्वायः मायिभागश्च विधिनाम् । अनुमानेन विज्ञेयं न स्वायं पञ्चमाक्षिणी ।
बृह. q. by द्वापमान XIV. 8, p. 231. स्मृतिश्च. II. p. 310 (reads स्वायत्तस्वाम्यं),
श्व. प्र. p. 564.

1216. तस्मात्पैतृके पैतामहे च द्रव्ये जन्मनैव स्वत्वम् । ... स्वायत्ते तु स्वायत्तिं पित्रादि-
माते च पुत्रादिपारतन्त्र्यमेव । स्वायत्तं द्विषदं चैव यद्यपि स्वयमर्जितम् । अज्ञम्भूय सुताम्भूयान-
न दातुं न च विक्रयः ॥ ये जाता वेप्यजाताश्च ये च सर्वे स्पर्शविताः । पुत्रि च तेष्विहाह्वयसि-
न दातुं न च विक्रयः ॥ इत्यादिस्मरणात् । मिता. on पा. II. 114. The first is q. by
the द्वापमान II. 29-30 (for which see note 1125). The first is ascribed to बृह.,
by श्व. नि. p. 411.

1217. पैतृके पैतामहे च स्वायत्तं यद्यपि जन्मनैव तथापि पैतृके पितृपरतन्त्रत्वात् पितु-
श्चार्जकत्वेन ग्राह्यमाणात् पित्रा विभियुज्यमाने स्वायत्तिं द्रव्ये पुत्रेणाहुमतिः कर्तव्या । पैतामहे तु
द्रव्योः स्वयमपविशिष्टमिति निवेष्टाधिकारोत्पत्तिं विज्ञेयः । मिता. on पा. II. 121.

Kā. (839) also says that the son has no ownership in the father's self-acquisition.¹²¹⁸ When Yāj. II. 114 allows the father either to give the best share to the eldest son or to make an equal division among all sons, the Mit. explains that this unequal division holds good only as to the self-acquisitions of the father. Similarly when Nār. (dāyabhāga 12) or Śāṅkha-Likhita say that the father may take two shares for himself, that is with reference to self-acquisitions, acc. to the Mit. Manu IX. 104 stating that sons have no power over property during the life of the parents refers to the self-acquisitions of the parents. In modern times courts have followed the view that a Hindu father (or any Hindu person whatever) may give, sell or bequeath by will his self acquired property (whether movable or immovable) to any body he likes (vide *Rao Balwant Singh v. Ram Kishori* 25 I. A. p. 54 at pp. 67-68 where the two verses cited by the Mit. were held to contain only a moral precept and not a rule of law capable of being enforced).

Mr. Kishori Lal Sarkar in his Tagore Law Lectures on the *Mīmāṃsā* rules of interpretation states (p. 21) that 'Mitākṣarā bears the impress of Buddhistic influence'. For this proposition he advances hardly any substantial evidence that will bear scrutiny. His reasons are mostly subjective and he refers to no ancient or medieval Buddhistic texts that elaborate the principle of taking property by birth or the rule of propinquity in deciding questions of inheritance, which two are the most fundamental tenets of the Mitākṣarā system. It appears that the evolution of the son's right to partition, of his equality with his father, of the absolute rights of a person to his self-acquisitions was a gradual indigenous growth and had nothing to do with Buddhistic thought. Buddhists had hardly any independent set of juristic ideas or works different from those of the Brahmanical jurists and in medieval times countries like Burma professing Buddhism turned to Brahmanic codes like that of Manu for regulating succession, inheritance and allied

¹²¹⁸ वैतान्त्यं समाने स्वाधिगते दुःखस्य चोभयोः । स्वस्य चोपाजिते विना न दुःखः
स्वात्ममर्त्येति ॥ कात्या. य. by सूत्रिभ. II. pp. 272-280, स्वय. नि. p. 410.

matters.¹²¹⁹ Vide pp. 552-560 about the origin of Dayabhāga doctrines.

In the preceding pages reference has been frequently made to sons, to their rights in ancestral property by birth and to their shares on partition. It is now time to refer to the various kinds of sons, principal (*mukhya*) and *gaṇya* (subsidiary or secondary).

In H. of Dh. vol. II. pp. 560-561 passages from the Rgveda, the Tāi. S., Śat. Br., Ait. Br., the sūtras and smṛtis emphasising the importance of a son for the spiritual welfare of a man have been cited. The principal purposes served by the birth of a son are succinctly stated in the Ait. Br. 33. 1. viz. the son enables the father to pay off the debt he owes to his ancestors, to secure immortality (*amṛta*) and heavenly worlds. These were the main purposes deemed to be served by a son in most remote times. Manu (IX. 106-107) and Yāj. I. 78 also mention these benefits. The desire was to continue and perpetuate the family (*varṣamā vacchedah* as the Mīt. has it) and to provide for the performance and preservation of religious *sacra* and offerings. This desire was common in ancient societies almost everywhere. The Śat. Br. XII. 4. 3. 1 (S. B. E. vol. 44 p. 157) states 'the father in later life subsists on the son and the son in early life subsists on the father'. The Nirukta¹²²⁰ (III. 4) quotes a ṛk verse 'thou

1219. Vide 'Notes on Buddhist Law' by John Jardine and 'Principles of Buddhist Law' by Chan-toon (Rangoon, 1894) for the *Dhammathats* (Dharmaśāstras), their origin from Indian Codes and words and contents and *Mah Nhin Swin v. U. Schw. Gons* L. R. 41 I. A. 121 pp. 131-139 for detailed remarks on the 36 *Dhammathats* of which the Manu Kyay is the most important and which were derived in their remotest origin from the laws of Manu. In (Champā) by Dr. R. C. Majumdar in Inscription No. 65 of Jaya-Indravarman II dated Śaka 1010 it is said: 'He followed 18 titles of law prescribed by Manu (Manuśāstra). [Manu VIII. 3. employs the words अष्टादशसु नामेषु निरुद्धानि. Vide also 'Indian influence on the Literature of Java and Bali' by Himansu Bhushan Sarkar pp. 93-94 and 104 for the influence of Manu on Javanese and Balinese codes and Dr. Majumdar on 'Svarṇadvīpa' part II pp. 1-23.

1220. सदेवहृदयोऽस्मात्पुत्रकम् । अष्टादशसु नामेषु निरुद्धाद्विजायते । आत्मा वै पुत्रनामानि स जीव इत्युक्ते इत्यम् ॥ निरुक्त III. 4. This verse is found in कौषीर्ये अष्टादश 4. 11 and is prescribed as a *mantra* in the Āp. Mantrapāṭha II. 11. 33 for recital in *jātukarma*, in आश्व. सू. I. 15.11 and मानवसूत्र I. 18. 6. Vide H. of Dh. vol. II. p. 235 n. 537. It occurs also in बौ. म. सू. II. 2. 15-16 (as a quotation) and in इन्द्रसिंहिल (q. by वि. र. pp. 554-555). The first half occurs in बृह. उप. VI. 4. 9 in another connection and the whole of it in आदिपर्व 74. 63.

art born from each of the limbs, from the heart (of the father), thou art indeed one's own self called son; mayst thou live for a hundred autumns!'. Gradually the idea arose (probably suggested by etymologists) that the son saved the father from the Hell called *pit*,¹²²¹ as stated by Manu IX. 138 (= Ādiparva 229, 14 = Viṣṇu Dh. S. 15, 44). The son's close connection with the offering of *pindās* to the ancestors is not much emphasized in the oldest works. But in the *sūtras*, in Manu and the other *smṛtis* this aspect of the benefits derived from the son is far more prominent than the others. In speaking of the *putrikā-putra* Manu (IX, 136) declares 'he should offer *pindā*' (to his maternal grandfather) and take the latter's wealth. As three descendants (son, grandson and great-grandson) presented *pindās* to the ancestor, all three had extravagant praises bestowed on them. Manu IX. 137 says: 'a man secures the (higher) worlds through (the birth of) a son, he obtains permanence (in those worlds) through a grandson, through the son of a grandson he wins the world of the Sun'¹²²². The Viṣṇudharma-sūtra 85, 67 declares¹²²³ 'A man should desire to have many sons (with the thought) that some one out of them may go to Gayā or offer the *Aśvamedha* sacrifice or let loose (in honour of the deceased father) a dark bull'. Br. (9 in Par. M. I. 2 p. 305) states: 'the *pitṛs* afraid of falling into Hell desire to have sons; (they think) one of them may go to Gayā and that one will save us; he will set at liberty a bull, he may perform sacrifices and execute works of public utility (like tanks, temples and parks), he will take care of us in our old age, he will offer *śrāddha* day by day'. The *Matsyapurāṇa* 204 (3-17) contains verses (that are called *pitr-pūthās*, verses sung by *pitṛs*) which breathe the hankerings of deceased ancestors after what

1221. The *śrī. Vākyapariṇāya* 1, 2, 5, quotes 'पुदिदि नरहरपाशपा दुःखं च नरकं विदुः । पुदि आनासतः पुजन्तिच्छान्तिं परत्र च ॥', *अष्टलिखित* v. by वि. र. p. 353 state आत्मा पुत्र इति शोकः पितृर्मातृपुत्रद्वयात् । पुत्रात्मन्नापते परमापुत्रस्तेनास्मि संजितः ॥

1222. पुत्रेण लोकालयति पौत्रेणानन्त्यमश्नुते । अथ पुत्रस्य पौत्रेण जन्मरपायेति विदुः पम् ॥ मनु IX. 137. This verse occurs in Vas. 17, 3, *श्री. व. सू.* II. 9, 7 (reads last *pīṇā* as मातृमेवाधिरुहति), विष्णुध. सू. 15, 46.

1223. एषस्या वयः पुत्रा पयोकोपि सयां वजेत् । एजेत वाधमेधेन नीले वा वृषमुत्तजेत् ॥ विष्णुधर्मसूत्र 83, 67 = मत्स्यपुराण 22, 6 = वायु 150, 10 = ब्रह्मपुराण 220, 32-33 (which reads मीरिं वायुद्वहेत्कन्यां नीले &c. मत्स्य (207, 39-40) calls this verse an ancient *vāṇa* and reads as in ब्रह्मपुराण. Compare अश्विर्मृति verse 35 for almost the same verse. काशानि पितरः पुत्राश्चरकापातनीरकः । सयां वास्यति वा काशि-रक्षोरमास्तनारविष्पति । करिष्यति वृषोऽस्यमिहापूर्तं तथैव च । पातयिष्यति वृद्धं त्वं आर्जु-वापयति चाप्यहम् । बृह. 9, by परा. मा. I, 2, p. 305.

they expect their descendants to do such as offering water in holy rivers, *śrāddhas*, going to Gayā, gifts of various kinds, construction of tanks, &c.

It is not, however, to be supposed that purely secular benefits to be derived from sons were not thought of at all. People were alive to them but those benefits were submerged under the flood of extravagant ideas about the spiritual benefits derived from sons. For example, the Bṛ. ¹²²⁴ Up. I. 5. 16, after mentioning the three worlds of men, *pitṛs* and gods, declares that the world of men can be won only through the son (while in I. 5. 17 there is eulogy of the son and instruction to him that he is Brahma, he is *yajña*, he is the heavenly world). Nār. IV. 5 says ¹²²⁵ "fathers wish to have sons on their own account thinking in their hearts 'He will free me from low and high debts'", Kat. (551) has a similar verse and makes the meaning of Nār. clear ¹²²⁶. Vide above (under *ṛpādāna* pp. 416-417).

Besides the *aurasa*, eleven or twelve kinds of subsidiary sons are mentioned by most ancient *smṛti* writers. Āp. Dh. S. does not recognize any son except the *aurasa*. Āp. quotes certain verses which express the view of an ancient sage called Aupajanghani and which are also quoted by the Baud. Dh. S. according to which the *aurasa* was to be recognized as the only son (vide H. of Dh. Vol. II. p. 602 n. 1417 for the quotation) Āp. II. 5. 13. 10 emphasizes that there can be no real gift or sale of one's child (*dānam kṛyadharmasācāpatyaṣya na vidyate*). But Āp. Dh. S. clearly shows that it knew that *kṣetrāja* sons were

1224. अथ यत्रो वाव लोका मनुष्यलोकाः पितृलोको देवलोक इति सोऽयं मनुष्यलोकाः पुत्रेणैव जन्मो नान्येन कर्मणा कर्मणा पितृलोको विद्यते देवलोकः । बुध. उप. I. 5. 16.

1225. इच्छन्ति पितराः पुत्रान् स्वाध्वेतोर्पतस्ततः । उन्नमर्णाधमर्णेभ्यो मामये मोक्ष-
यिष्यति । नारद (अष्टादान 3) । कुल्ल says to बटोल्क in जोणपर्व 173, 54 'इच्छन्ति
पितराः पुत्रान् स्वाध्वेतोर्पतस्ततः । इह लोकात्परे लोके तारयिष्यन्ति ये हिताः ॥ 'जाय-
मानोः' इति सुलुर्गं पितृकण्डुलमे वृद्ध्या देवमधममनुष्यमित्यर्थः । ति. ता. folio 181.

1226. पितृणां वृद्धिर्नित्यं दुर्निवृत्तमद्वयम् । विमोक्षस्तु यतस्तस्मादिच्छन्ति पितरः
सुतान् ॥ कारणः ॥ by स्मृतिच. II. p. 168, परा. मा. III. 263.

raised and forbids that practice. In II. 6. 13. 1-5¹²²⁷ it states, 'sons begotten by a man, who approaches in the proper season a woman of equal caste that has not belonged to another man (as wife) and that has been married to him according to the śāstras, have the privilege to follow the occupations (peculiar to their castes) and to inherit property; if a man has sexual intercourse with a woman who had been married before to another or was not married legally to him or belongs to a different caste, they both incur sin and through that (i. e. their sinfulness) the son also becomes sinful'. In II. 10. 27. 2-6 Āp. condemns the practice of *nyoga* 'a husband (or his elders) shall not appoint a wife who occupies the position of a *sagotra* to others (who are not *sagotra*), for they declare that a bride is given to the family (of the husband and not to the husband alone). This (practice of appointment) is forbidden (now) on account of the weakness of (men's) senses. The hand of even a *sagotra* is (deemed in law to be) that of a stranger, as well as that of any other person (except the husband). If the marriage vow is violated, both (husband and wife) go to Hell.' Gaut. 28. 30-31, Baud. Dh. S. II. 2. 14-37, Vas. 17. 12-38, Arthashastra III. 7, Śāṅkha-Likhita (q. by V. R. p. 547), Hārita (q. by V. R. p. 549), Manu IX. 158-160, Yāj. II. 128-132, Nār. (dāyabhāga 45-46), Kāt (q. by V. Nir. pp. 434-435), Br. (S. B. E. vol. 33 pp. 375-376 verses 33-35, 39-41), Devaia (q. by Haradatta on Gaut. 28. 32, Dāyabhāga X. 7-8 p. 147, V. R. p. 550), Visnu Dh. S. 15. 1-30, Mahābhārata (Ādiparva 120. 31-34), Brahma-purāṇa (q. by Aparārka p. 737), Yama (q. by V. R. p. 147 and D. C. pp. 80-81) enumerate the several sons in different sequences and sometimes under different names also. Taking the order in the Manusmṛti as the basis, the following table will, it is hoped, convey some idea about their number, rank and importance.

1227. ससर्वापूर्वज्ञातविदितानां पथर्तु मन्थनः पुत्रास्तेषां कर्मणिः समन्तरः । दुरासेन
... पूर्वज्ञातान्संस्तुतायां वर्णान्तरे च त्रिपुत्रे द्यौः । तत्रापि द्यौःपुत्रादुद्वेष्टः । आप. प. सू.
II. 6. 13. 1-4; समोदस्थानीयां न परेभ्यः समाचक्षते । कुलाय हि स्त्री यदीपत इत्युप-
दिशति । तदिन्द्रियदीर्घत्वादिपक्षश्च । अविशिष्टं हि सर्वं पापेः । तदुत्पत्तिक्रमे स्मृतं
पुत्रसंयोगैरहः । आप. प. सू. II. 10. 27. 2-6.

Kind of son (acc. to Manu)	Gautama	Baudhāyana	Kautilya	Vasishtha	Hārini	Śaṅkha-Likhita	Yāj.	Nārada	Bṛhaspati	Devala	Viṣṇu	Ādiśārva	Yama	Brahma-parāśara
1 Aurasa	...	1	1	1	1	1	1	1	1	1	1	1	1	1
2 Putrikāputra	...	10	2	2	3	5	3	3	3	3	3	2	3	2
3 Kētraja	...	2	3	3	2	2	3	2	3	3	1	3	2	1
4 Datta	...	3	4	9	8	7	9	9	4	9	3	7	9	4
5 Kṛtrima	...	4	5	11	...	...	9	11	7	11	12	9	10	6
6 Gūḍhoṣṭanna	...	5	6	4	6	6	4	6	12	3	6	6	6	9
7 Apavidāha	...	6	7	5	11	9	7	12	3	3	6	11	...	7
8 Kānjua	...	7	8	6	5	4	5	5	4	10	4	5	5	10
9 Sahodha	...	8	9	7	7	10	8	11	5	11	7	7	11	8
10 Kṛita	...	12	10	12	9	8	10	3	10	6	12	9	8	7
11 Pannarbhava	...	9	11	8	4	3	4	6	7	9	8	4	4	12
12 Svayamdatta	...	11	12	10	10	11	12	10	12	...	10	10	10	5
13 Saudra	13	...	12	...	11	...	8	...	...	12	...	13

1228. The औरस is called स्वर्जजन्तु in आदिपर्व 120. 33. I understand प्रणीत, परिकीर्तित and स्वीरणीपुत्र in the आदिपर्व to be the same as पुत्रिकापुत्र, श्वेज and मुद्रज respectively. स्वर्जजन्तु: प्रणीतश्च परिकीर्तितश्च यः सुतः । पौत्रमर्थश्च कार्त्तिकः स्वीरणीपुत्रश्च जायते । दत्तः कीर्तितः कुत्रिजश्च उपन्यसेत्स्वर्जं च यः । सहोदो ज्ञातिरेताश्च हीनपोनिपुत्रश्च यः । पुत्रपूर्वतमाभावं मत्वा लिप्सेत वै सुतम् । उपमहादेवराजुसः काकुलन्ते पुत्रमतपदि । आदिपर्व 120. 33-35. I take ज्ञातिरेता as an adjective of सहोद and हीनपोनिपुत्र as सौद. It has to be noted that the अनुशासनपर्व (49. 3-11) mentions 20 sons in all and employs a peculiar terminology in several cases, viz. औरस (also called अनन्तरज), निदकज (for श्वेज), प्रमुद्रज (meaning अनियोगोत्पन्न), पतिताश्रमाचार्या जन्तु, and speaks of दत्त, कीर्त, अप्रपुत्र (=सहोद), 6 अपधर्मज (1 = अनुजोम), कार्त्तिक and 6 अपसद (चाण्डाल, व्राध, वैद्य, माधव, वामक and मूत्र). The Anuśāsanā (49. 11) expressly states that it is not possible to deny altogether the status of sonship to these sons (पुत्रा इति न शक्यन्ते मिथ्या कर्तुं नराधिप). It then says (49. 20-21) that when a boy is abandoned by his parents and he is brought up by another and his natural parents are not known, he belongs to the caste of the man who brings him up and that even for कार्त्तिक and अप्रपुत्र (सहोद) sons saṃskāras are to be performed as if they were one's sons (49. 25-26).

Viṣṇu Dh. S. (15. 27) mentions 'yatra-kvacanotpādita' (procreated anywhere) as the 12th and last. The com. Vaijayaṅti explains it in two ways: (1) procreated by a person on a woman, regardless of whether she is his own or another's wife or whether she is of the same caste or not, whether she is married or unmarried, whether her marriage has been consummated or not; (2) the son of a man from a śūdra woman not married to him. Even in the last sense he cannot be called *śaudra* (whom Manu IX. 178 and Yāj. I. 91 define as the son of a śūdra wife from a brāhmaṇa). Hārita as quoted in the V. R. p. 549 mentions a son called 'sahasā dr̥ṣṭa' (seen by chance), who seems to be probably the same as *kr̥trima*. The *saudra* is omitted by several writers (even ancient ones) like Gautama, Kautilya and Hārita. Manu speaks of only twelve sons (IX. 158) and does not enumerate the *putrikāputra* among them, though he speaks of the *putrikā* (IX. 127 and 134 and elsewhere) as equal to the son. It is therefore that Br. (S. B. E. 33 p. 375 verse 33) states that of the thirteen sons mentioned in succession by Manu the legitimate son of the body (*aurasa*) and the *putrikā* (the daughter appointed as a son) continue the family. Vas. 17. 12 emphatically declares (*dehādāta ityeva putrūḥ purimadr̥ṣṭāḥ*) that only twelve sons have been noticed by the ancient (sages) and it is no doubt true that most writers generally enumerate twelve. A *smṛti* text quoted by Haradatta on Gautama and by the Dattaka-mīmāṃsā mentions 15 kinds of sons. Vide note below¹²²⁹. The number is arrived at by counting the *putrikā*

1229. औरसः पुत्रिका भीजिलेवजो पुत्रिकायुतः । पौनर्वपश्च कानीनः तद्विदो
पुत्रसंभवः । दत्तः क्रीतः स्वपुत्रः कुविनश्चापविद्धकः । पत्रकचोपादितश्च पुत्राक्षरः
वृषपक्षश्च ॥ स्मृति १. by हरदत्त on मी. 28. 32. दत्त. मी. p. 68. The compound
भीजिलेवजो is to be taken as भीजिल and लेवज. The word *bija* is the epithet
of the man who is appointed to beget issue in the practice of *niyoga*, the
भीजिल being the son begotten by such a man, who (the son) is deemed by
some to be the son of both (of the begetter and of the husband of the wife).
Dr. Jolly in Tagore Law Lectures on partition &c. p. 146 is wrong in taking
'bija' as 'the son procreated with another man's wife'. 'Bija' is em-
ployed by Gaut. IV. 3 and Manu IX. 31-33 in the sense given above. Vide
H. of Dh. II. p. 599 n. 1409 for *bija*, *kṛetra* (meaning wife) and *kṛetrīka*,
तद्वपश्चिवाः पुत्रो ह्यौ सुतो कुण्डगोदको । पत्नी जीवति कुण्डः स्थाय्यते भवेति गोदकः ॥
औरसः लेवजश्चैव दत्तः कुविमकः सुतः । दद्यात्पुत्रा पिता कालि स पुत्रो दत्तको भवेत् ॥ पराशर
(IV. 23-24. *Laghu-Āśvalāyana* (21. 14-15)) says that though certain
sages provide that the Kuṇḍa and Gōdaka sons should have the *samśkāra*
performed on them, that was the practice in other ages and that it is prohi-
bited in the Kali age.

(daughter appointed as a son) and the *putrikāputra* (the son of the appointed daughter) as two, dividing the *kṣetrāja* into two viz. as the son of the begetter (*bija*) and as the son of the wife (i. e. of the husband of the wife) and the son produced anywhere (as mentioned by Viṣṇu Dh. S.) is 15th and the last. The *Parāśarasmṛiti* (IV. 23-24) mentions, besides *Kuṇḍa* and *Golaka*, only five kinds of sons.

It is necessary, before proceeding further, to give brief definitions of the twelve or thirteen kinds of sons from Manu and other writers. The legitimate son (*aurasa*) is one begotten by a man on his own wedded wife of the same caste. The *putrikāputra*¹²³⁰ is of two kinds: (1) a sonless man may appoint his daughter as his son (she is then called *putrikā* and treated as a son); (2) or she may be given to a person in marriage with the stipulation 'I give you in marriage this brotherless girl decked with ornaments; the son born of her will be my son'. In this case the son born of the daughter so given becomes the son of his maternal grandfather. The *kṣetrāja* (the son of the wife) is one who is begotten on a man's wife (or widow) by a *ṣaṅkṛta* (agnatic kinsman) or by one not of the same gotra, according to the rules of *nivoga*, when the man himself is either dead or impotent or suffering from (an incurable) disease. That is the son given (*dattaka* or *dattima*) whom his father or mother gives as a son affectionately in a time of distress with water and who is of the same caste (as the adopter). He is the son called *kṛtrima* (made) whom a man makes his son, the latter being of the same caste, being clever in distinguishing between right and wrong and being endowed with the qualities a son should possess. He is the son born secretly (*gūḍhotpanna* or *gūḍhaja*) as he is called by Baud. and Yāj., who is born in a man's house, it being not known who is his begetter; and he belongs to him of whose wife he is born. He is the son called *apaviddha* (cast off) whom a man receives as his son after he has been abandoned by his parents or by one of them. The *kāinina* (maiden's son) is one whom a maiden bears secretly in the house of her father and he belongs to him who marries her afterwards.

1230. पुत्रिकापुत्रो द्वेष्टः । तत्रापमाह बलिः (१२. १२) — अत्रापुत्रो न्यायानामि सुन्दे कर्मात्मक-कृतम् । अस्यां नो जायते पुत्रः स मे पुत्रो भविष्यति ॥ इति । अत्रापमाह स एव — पुत्रीयः पुत्रिका — इति । अविमन्यते कन्यया पितुरर्धदेविकादि कार्यम् । २२. मयूख p. 167. In the first sense mentioned above in the text the word पुत्रिकापुत्र is dissolved as पुत्रिका एव पुत्रः (२ कार्यधारक) and in the 2nd as पुत्रिकायाः पुत्रः (२ तादृश compound). The *mita*, on च. II, 123 gives the same explanation.

The *śchoḍha* (received together with the bride) is the son born of a woman who was pregnant at the time of marriage, whether that fact was known or unknown (to the person marrying her) and he belongs to the person who weds the (pregnant) woman. The *kṛta* (son bought) is one who is bought by a person from his father and mother for making the boy his son, whether the boy be equal or unequal (in qualities). The *punarbhava* (the son of a remarried woman) is one to whom a woman, being abandoned by her husband or being a widow, gives birth after she contracts a second marriage of her own accord. He, who, having lost his parents or being abandoned by them without proper cause, gives himself to a man (as a son) is called *svayamdatta* (a son self-given). The son whom a brāhmaṇa begets through lust from a śūdra wife is called *pārasava* (or *śaudra*), since he, though living, is (like a) corpse.

The list of twelve or thirteen kinds of sons looks rather formidable, has puzzled and misled even great scholars into making all sorts of sweeping assertions and putting forward untenable theories about the origin and necessity of so many sons. For example, Dr. Jolly in his '*Recht und Sitte*' (English tr. p. 156) observes 'The twelve kinds of sonship, which to some extent are based on the illicit connection of the mother and for the greater part have nothing to do with the blood-relationship of the son with the father, are probably the most striking feature of Indian family law. The cause of this abnormal importance being attached to male issue is to be sought, according to the *smṛtis*, in the offering of sacrifices to the *manes* which depends upon the male issue; yet, however, originally an economic motive was perhaps a more important factor in it—to get for the family as many powerful workers as possible'. The learned writer appears to hold that the *smṛtis* regarded all the secondary sons as equally competent to confer spiritual benefit and that at one and the same time a man could have all or most of them as sons. But he is mistaken in both these respects. The very definition of *putrikāputra*, *kṣetrāja*¹²³¹ and *dattaka* given by many of the *smṛtis* show that one who has already an aurasa

1231. अनुव्रोऽनेन विधिना सुतो कुर्यात् पुत्रिकाद् । मनु IX, 127 ; पितृवृत्ते-
पुत्रिकामनपयोऽग्निं भजायति चेष्टाऽस्मदुपमपामिति सेवाय । मां. 28, 16 ; देवराज्ञा
सपिण्डाद्वा जित्वा सम्पत्कुर्यादुक्तया । यजेत्सिताग्निमन्त्या सन्तानस्य परिश्रये ॥ मनु IX, 39 ;
अनुव्रणेव कर्तव्यः पुत्रपतिविधिः सदा । पिण्डोदकजिपादेतोर्वर्माभस्माव्ययमभतः ॥ अत्रि 32
q. by दत्त. मी. p. 3 and दत्त. च. p. 2.

son, grandson or great-grandson could not have a putrikāputra, a ksetraja or an adopted son. If the definitions of all the 12 or 13 kinds of sons are carefully analysed, it will be quite apparent that the long list is due to the ancient writers' great *penchant* for divisions and sub-divisions based upon very slight differences of circumstances. The several kinds can be classified into three or four groups as done by Devala.¹²³² All the five sons called *dattaka*, *kṛita*, *kṛtrima*, *scapabutto* and *apariddha* are sons who are affiliated by a person under various circumstances. There is no tinge of any illicit connection of the mother in any one of these, the one thing common to all of them being that they are the sons of one man and are treated by another as his. Similarly the *pauṣarbhava* and *śūdra* are the legal sons of the man himself, but there is opprobrium attaching to them, because in the first case the mother contracted a re-marriage (which was very much condemned by the *smṛtis*) and in the other a brāhmaṇa married a śūdra woman (which also was looked down upon, if not absolutely forbidden as done by Yaj. I. 56). The *pauṣarbhava* son of a *deja* is still called a *divija* by Manu III. 181, but Manu only provides that he is not fit to be invited at a śrāddha. The putrikā (the daughter appointed as a son) is the man's own child and the putrikāputra also is the man's own grandchild and both these are special cases of adoption and no question of mother's illicit connection arises in these. So out of 13 kinds of sons, nine were entirely free from any taint of illicit connection. There remain only the four viz. ksetraja, gūḍhotpanna, kāṇina, sahodha. The ksetraja was in a class by himself and was a survival of an ancient practice prevalent in many countries all the world over, which had been condemned in India by Āp. (as shown above on p. 644) and his predecessors several centuries before the Christian era. It may, however, be pointed out that some medieval writers held the view that several secondary sons like the *dattaka*, *kṛita* &c. could be had by a man having no *aurasa* son.¹²³³

1232. एते द्वादश पुत्रास्तु सन्तत्यर्थमुदाहृतः । आत्मजाः परजाश्चैव लब्धा बाह्विद्धिकास्तथा ॥ देवल q. by बापनाम X. 7 p. 147. वि. र. p. 550, हरवृत्त on Mō. 28. 32. The औरस, पुत्रिका, दौर्गन्ध and शौद्र would be आत्मज, the देवपुत्र would be परज, the दत्तक, कृत्रिम, कानि, स्वदेव and अपविद्ध would be लब्ध (and also परज) and गूढज, कानि and सहोदर may be called बाह्विद्धिक.

1233a. Vide the दत्तकसिद्धान्तमञ्जरी of बालकृष्ण (D. C. Ma. No. 203 of 1886-92, folio 11b) 'तस्मादुक्तकारणोक्तविधेः काम्यव्यवसायनद्वारा वास्तव्यामनासिद्धिदयन्ते पुत्रान्तरग्रहणस्य आश्रयितृत्वोक्तं दत्तादिभिः पुत्रैर्बहुवृत्तं पितुः संप्रापणमेवेति सिद्धान्तः ।'

The chief concern of the *smṛtis* as shown clearly by the *Anuśāsanaparva* (chap. 49 quoted above on p. 645) and the com. of *Nīlakaṇṭha* was to provide for the maintenance and the performance of the *samśkāras* of those children that may be either abandoned by their parents or may be under the cloud of illegitimacy.

There is great confusion and contradiction among the *sūtras* and *smṛtis* about the place of the several kinds of sons and about their rights. For example, Gautama (probably the most ancient among extant *sūtrakāras*) assigns the 10th place to the *putrikāputra*, while Baud., Kaut., Yāj., Br. and Devala give him the 2nd place and Vasīṣṭha, Saṅkha-Likhita, Nār., and Viṣṇu put him 3rd. The *dattaka* is placed very low in the list by most works except by Manu, Gaut., Baud., Br. and Brahmapurāṇa (which put him 3rd or 4th). The 12 kinds are put in two groups by some works. Gaut. (28. 30-31) provides that the *aurasa*, *ksetraja*, *datta*, *krtrima*, *gūḍhotpanna* and *apaviddha* are *rikthabhājah* (take the wealth) and also belong to the *gotra* of the man whose sons they are, while the other six take only the *gotra* but not the wealth. Baud. Dh. S. (II 2. 36-37) employs the same words *rikthabhājah* and *gotrabhājah* but differs from Gaut. in including *putrikāputra* among '*rikthabhājah*' and omitting him from the group of '*gotrabhājah*'.¹²³³ Another division (each having six kinds) is into *bāṇḍu-dāyāda* or *dāyādabāṇḍava* (Manu IX. 158-159 and Nār. *dāyabhāga* 47) and *adāyādabāṇḍava* (Manu IX. 160, Vas. 17. 38, Nār. *dāyabhāga*, 47). The first group, acc. to Manu, comprises *aurasa* (also *putrikā*), *ksetraja*, *datta*, *krtrima*, *gūḍhotpanna* and *apaviddha*. They are so called because they take the wealth of their father and also of his kinsmen (in the absence of nearer heirs), while the members of the 2nd group (which acc. to Manu IX. 160 comprises *kānina*,

1233. बुद्धा औरसलेखजडविमृदोत्पजापविद्धा रिक्थभाजः । कानीनसहोदपोमर्षव-
पुष्टिजादुत्तरर्षद्वुसकील गोत्रभाजः । नो. 28. 30-31; एवं गोत्रभाजो गोत्रमेव केवलं भजन्ते
न रिक्थम् । पूर्वं तु रिक्थभाजो गोत्रभाजश्चौरसेन समभिधानात् । सर्वे चैते सजातीयः ।
दृष्टव्यम् । What is meant by रिक्थभाजः is not quite certain. Does it mean
'they take the wealth of their father and of his kinsmen' or does it mean
'they take the wealth of their father alone and of no one else'. देवल
appears to hold that बन्धुदायाद् has the first sense. तेषां यद् बन्धुदायाद्; पूर्वमेव
पितुरेव यद् । देवल q. by दायाभाग X. 7 p. 147. Both the *mita*, on Br. II. 132 and
the *śāstra* explain बन्धुदायाद् in the first of the two senses set out above. 'और-
साद्वयः यद् न केवलं पितृदायादराः किन्तु बन्धूनामपि सपिण्ठादीनां दायादराः । अयं वरयुक्तः
पितुरेव परं दायादरा न सपिण्ठादीनाम् । दायाभाग X. 8 p. 147. स्वर्पजातः पितृबन्धूनां
च दायादः । परं जातः सप्तकीर्तये न बन्धूनाम् । अर्थशास्त्र III. 7.

sahodha, kṛita, paunarbhava, svayamdatta and saudra) are only bandhavas (i. e. belong to the gotra of their father), but cannot succeed to the wealth of their father's kinsmen. Here also there is no agreement among the smṛtis. Vas. (17. 5-25), Sankha-Likhita (q. in V. R. p. 247), Nār. dāyabhāga 47 and Harita include in the first group aurasa, kṣetrajā, putrikāputra, paunarbhava, kānina and gūdhaja and the rest in the 2nd group. Kauṭ. asserts that only the aurasa son succeeds as heir to the kinsmen of his father while the others (that are not procreated by him) succeed only to the father who brings them up, but not to his kinsmen. Yāj. II. 132 states that each of the twelve kinds mentioned by him takes the wealth of the father and offers *piṇḍa* to him in default of the preceding one and further requires that this is so only if it is certain that the sons are of the same caste as that of the father. Gaut. 28. 32 states that¹²³⁴ the kānina and the other sons called *gotrabhājāḥ* (in 28. 31) take only one fourth of the estate of the father if no aurasa nor any of the other sons called *rikṭabhājāḥ* exists (and the rest of the estate is taken by the sapinḍas), while Kauṭ., Devaia and Kṣi. (857) state that the dattaka, kṣetrajā and other kinds of sons are entitled to one third share only if an aurasa is born provided they are of the same *varṇa* and that if they are of a different caste, they are only entitled to food and raiment. If a man, having no son, made his daughter a putrikā or thinking himself to be impotent had a kṣetrajā son or adopted a son and then an aurasa son was born, difficult questions of the distribution of his property arose on which there was no unanimity. Manu IX. 163 says that only the aurasa son is entitled to all the paternal wealth and all the other kinds should be given maintenance in order to avoid the fault of being cruel. But as regards the case where a putrikā is first made and then an aurasa is born Manu (IX. 134) prescribes that these two should divide the paternal estate equally,¹²³⁵ while

1234. चतुर्विंशति औरसाद्यभावे । गौ. 28. 32 ; तेषां सवर्णा ये पुत्रास्ते पुत्रीप्राप्त-
भाविनः । इतिनास्तत्पुत्रीपुत्रीपुत्रीप्राप्ताद्वनसंप्रदाः ॥ देवद. q. by द्वापभाषा X. 7. p. 147 ;
उत्पत्ते लीरसे पुत्रे चतुर्विंशद्वरा सुताः । सवर्णा असवर्णास्तु धाताध्याद्वनभाजनाः ॥ कात्या.
q. by मित्रा. on या. II. 132. द्वापभाषा X. 13 p. 148 and वि. वि. p. 150 read पुत्री-
प्राप्तद्वरा in कात्या. ; औरसे उत्पत्ते सवर्णास्तु पुत्रीप्राप्तद्वराः । असवर्णा धाताध्याद्वनभाविनः ।
अधेशास्व III. 7. The सवर्नरत्न (folio 936) says कात्यायन read 'पुत्रीप्राप्तद्वरा'.

1235. द्वावपति appears to combine Manu IX. 163 and 134 'एक एवौर ।
विश्वे एते स्वामी प्रसीतिः । सवर्णा पुत्रिका योना मर्त्यास्यपरे इवुत ॥ q. by वि. p. 241, अथ. वि. p. 237. सवर्णरत्न (folio 936).

Manu IX. 164 asks the aurasa to give 1/5 or 1/6 of the paternal wealth to the ksetraja. This confusion and contradiction about the places and the shares of the several sons leads one to infer that the institution of several kinds of sons was not very common or generally recognized, was rather confined to some localities or communities and was dying out even in the times of the ancient smrtis, if it ever existed in full force at all at any time.

As regards gūdhaja, kānina and sahodha there is this to be said. They were the result of illicit connection; but some one had to maintain them, to bring them up and be their guardian. The smrtis when they assign these as the sons of the husbands of the women of whom they are born are really providing for these matters of maintenance and guardianship. Br. says that dattaka, apaviddha, kṛita, kṛta, and saudra, if of pure caste and pure actions, are middling, while the ksetraja, paunarbhava, kānina, sahodha and gūdhaja are condemned by the good (S. B. E. 33 p. 376 verses 40-41).¹²³⁶ The kānina was to be under the guardianship of the father of the girl (Yaj II. 129) till she remained unmarried, but when she married the damsel's son came under the dominion of the person who married her (Manu IX. 172). The very fact that the kānina was assigned to the husband who married the girl shows that this was done because it was deemed that by marrying such a girl the husband condoned her past lapses. Similarly in the case of sahodha, it was deemed that either the child must have been procreated by the husband himself before marriage or that he condoned the conduct of the wife. It appears to have been thought that when the husband (the party most concerned) did not openly object it was not open or allowable for any one else even by proof that the child was kānina or sahodha to call

1236. दत्तोपविद्धः क्रीतश्च कृतः शौद्रस्तथैव च । जालिशुद्धः कर्मशुद्धा मध्यमास्ते
सता मताः ॥ शेषजो यत्नितः सद्भिस्तथा वीर्यमैव कृतः । कानोत्तश्च सरोदथ मृदोत्पन्नस्तथैव च ॥
बृह. II. by वि. २. p. 552; हारीश [q. by वि. २. 552] designates क्रीत, स्वपद्वत्, and
शौद्र ॥ काण्डपुटः शूद्रपुत्रो स्वपद्वत् न चैते क्रीतकालताः । सर्वे ते शौद्रिकाः पुत्राः काण्ड-
पुत्रो न श्रेष्ठः ॥ स्वकुले दृष्टः कुल्य गो वे परकुले ज्ञेयम् । तेन दुश्चरितेनासौ काण्डपुटो न
सेव्यः ॥ The 2nd verse is quoted by अपराजित p. 453. भारव. IV. 60 calls a काण्डपु-
त्रो who persists in the profession of arms after a season of distress is over
काण्डपुटः. The अनुवाकसंनयने 1.1.21 has that word. कुले काण्डमिति कथाम् परमानं
दुर्वीर्यं ते मनुः । तत्र तेमहासरो यः स्थाप्य ते काण्डं विनिर्दिशेत् । यम II. by वि. २. p. 486
which also quotes the verse स्वकुले from यम and हारीश both separately. काण्डपुटः
literally means 'one who carries on his back arrows' (i. e. probably
a brāhmaṇa whose profession is that of a soldier).

for the abandonment of the child. Similar remarks apply to the gūdhaja. As shown in H. of Dh. vol. II. pp. 571-573 if the wife was guilty of adultery the husband had certain powers of correction over the wife, but if he chose to be complaisant, then the smṛtis did not compel him to disown or abandon the child. These very smṛtis (like Gautama, Vaa., Nār.) that are very harsh on women for adultery allow the gūdhaja, kānina and sahodha to be secondary sons. So the only way in which these two attitudes can be reconciled is by holding that when the husband condones moral lapses on the part of the woman whom he had accepted as his wife the smṛtis provide for the maintenance, guardianship and succession of such offspring of illicit connection. Even among medieval commentators there was divergence about paunarbhava, kānina, sahodha and gūdhaja; Medhātithi on Manu IX. 181 holds that they are entitled to nothing but food and raiment in any case, while the Mit. (on Yāj. II. 132) holds that even the kānina and the rest take the father's wealth in default of aurasa and the other kinds of sons. The Mit. (on Yāj. I. 90) however holds that kānina, sahodha and gūdhaja being the outcome of adultery cannot be savarna with the husband of their mother, are really different from savarna sons and even anuloma and pratiloma sons.

A good deal can be said about the spiritual benefit supposed to be derived from secondary sons.

The high eulogy bestowed on the son in the Vedic and smṛti literature has reference only to the *aurasa* son. Manu IX. 180 asserts that the eleven kinds of sons viz. kṣetrajā and the rest (except aurasa and putrikā) are merely substitutes for the real son, admitted to prevent the cessation of religious rites and in IX. 181 Manu states the final conclusion that such sons as the *kṣetrajā* that are procreated from the seed of others really belong to him from whose seed they spring and not to the other man (who takes them up). Br.¹²³⁷ (S. B. E. 33 p. 375 verses 35-36) declares: 'thirteen sons were enumerated in

1237. पुत्रसंख्येदं योका मनुना पेशपूर्वकः । सन्तानकारणे तेषामौरसः पुत्रिजा तथा ॥ आर्जवं विना यथा तैले सद्भिः प्रतिनिधिः स्मृतम् । तथैकादश पुत्रास्तु पुत्रिकौरसयोर्विना ॥ कुलस्यपि च by अपराधः p. 735, स्पष्ट. नि. p. 439. The 2nd is attributed to पुत्रसंख्येदं by कुलस्य प. 161. The कुलस्यसंग्रहः (p. 73) quotes तेषाव-
धीयपरिधिः as follows:—आज्याभावे तैले प्रतिनिधिरागे दधिपक्षी तद्वत्तमे तद्वत्त-
मिदानीं सद्भिः संवृत्त्यायार्थे कुलसि. The अष्टाव्याहरीतद् III: provides: चत्वारं
पुत्राङ्गे कविशोभते तैले.

order by Manu, out of whom only the *aurasa* and *putrikā* are the cause of propagating the line. Just as oil is declared by the good to be a substitute (in sacrifices) in the absence of clarified butter, so the eleven kinds of sons in the absence of *aurasa* and *putrikā*¹²³⁸ (are admitted merely as substitutes and not the real thing). Although Yāj. II. 132 declares that each succeeding one out of the twelve kinds of sons takes the estate in the absence of each preceding one and offers *pinda* to the deceased owner, yet the efficacy of the *pindas* offered by the several sons was deemed to differ very much. Manu leaves no room for doubt on this point when he says (IX. 161) 'a man desiring to cross beyond the gloom (of bad worlds, hell) through (or with the help of) bad sons (such as the *ksetraja*) secures a result similar to what a person crossing (a sheet of) water in a leaking boat secures'. The idea is that secondary sons cannot confer the same spiritual benefit as the *aurasa* son can. Medhātithi on Manu IX. 166 and the D. M. explain this very clearly. An *aurasa* son confers the highest spiritual benefit. The substitute sons (as indicated by the very use of the word *pratinidhi*) confer a much less benefit. Even a man's widow can perform his *śrāddha* if he be sonless, but as she could not offer the *pārcana śrāddha* her act was not deemed to be as efficacious as a *śrāddha* performed by a son.¹²³⁹ Jaimini devotes several sūtras to the subject of *pratinidhi* (a substitute) in VI. 3. 13-41. The main conclusion established is that generally speaking there can be no substitute as regards the *devatā* (the deity to which a particular offering is directed by the Veda to be offered in a particular sacrifice), the fire (*āhavanīya* and other consecrated fires), the *mantra* (which is to accompany a particular offering) and certain rites specifically prescribed to be done in a sacrifice (such as 'samidho yajati' in Darśa-pūrnāmāsa) and the *śūlman* (the sacrificer). On Jaimini VI.

1238. कानीनसद्विद्वेषीनर्भवमुद्रोत्पत्ता न रिक्थभाजः द्रवकाद्वपुस्तु रिक्थभाजोऽसत्पौरसे कानीनाद्वपुश्च सत्पौरसे न पिबुष्यन्हराः प्रासाच्छादुनभाजः केवलं सत्पन्ननि चौरसे । मेधा. on मनु. IX. 181; औरसाद्यभावे तु कानीनादीनामपि सकलविषयमग्रहणमस्त्येव । पूर्वभाजे परः परः—इति वचनात् । मिता. on वा. II. 132.

1239. यद्यपि पुत्रभावे तु पत्नी स्वादिवादिना पत्न्यादीनामपि क्रियाधिकारः श्रूयते तथापि मातृवत्पुत्र लोकोत्तीर्णापादिभ्यज्यात् पुत्रकृतक्रियाजन्या लोका न कृपादिकृतक्रिया जन्मन्त इत्यवर्गं वाच्यम् । ... उक्तं च मेधातिथिना । पदौत्तरस्य प्रथमकल्पिकत्ववचनं तत्र स्पष्टाशेषयोगि किं तु उपकारातिशयः । ययोरसौ पूर्णसौ शक्योत्पुत्रकारं कर्तुं न तथैतर इति । उपकारापञ्चपानिमापञ्च यत्नितिशिष्यवहार इति । द्रव. ती. pp. 38-39. The passage quoted from मेधा. occurs in his *śāstra* on मनु IX. 166 (with slight variations).

3. 35 Śābara makes¹²⁴⁰ it clear that in employing a *pratinidhi* the vedic rite becomes deficient and does not yield the full reward of the religious act. The Satyaśādhā Śr. 8. III. 1. asserts¹²⁴¹ that there can be no substitute for the sacrificer, the wife, the son, the place, time &c. (prescribed by the Vedic texts for any rite). Therefore it is clear that there was difference of view among very ancient writers about the spiritual benefit to be derived from substitute sons. The natural human tendency to simplify matters and water down strict injunctions prevailed and it began to be thought that even subsidiary sons conferred some spiritual benefit (though not as much as the *aurasa* son). For about two thousand years the *ksetraja* and other sons have been prohibited by the *smṛtis*. For example, Br states that Manu first describes the procedure of *nigoga* and then forbids it, that it is impossible to practise *nigoga* in the *deūpara* and *kali* ages owing to the deterioration in man's knowledge and *tapas* (vide H. of Dh. vol. II. p. 603 n. 1418 for the quotation). The passage from Śaunaka forbidding sons other than *aurasa* and *dattaka* in the Kali age quoted by Aparārka and others has been cited above (n. 1131).

A few remarks will be made on each of the several sons.

Aurasa. Baud. Dh. 8. II. 2. 14, Manu IX. 166, Vas. 17. 13, Visnu Dh. 8. 15. 2, Kauṭ. III. 7 and others define the *aurasa* as the son procreated by a man himself from his wife married acc. to sacramental forms prescribed by the *sāstra*. From Āp. (quoted above in n. 1227) and Baud. it follows that the *aurasa* is only the son procreated on a wife of the same varṇa as that of the husband; but this was the purists' view. Others including

1240. अभावे हि क्षुत्तयायुक्ताः प्रतिनिधिः । क्षुते हि सकला व्यवस्था । प्रतिनिधौ विकलाः । शबर on जै. VI. 3. 35.

1241. न स्वामित्वस्य भाषायां पुत्रस्य देवस्य कालस्वर्गदेवतायाः कर्मणः शब्दस्य च प्रतिनिधिरिति । सायणादुच्यते III. 1. The D. M. (pp. 33-34) explains this sūtra about there being no *प्रतिनिधि* in place of a son by saying that it is restricted to certain *śrauta* matters only such as the 'Pitṛpatriya sāman', or the uttering of a benediction in the words 'tantave jyotiṣmatim &c.' and that if the sūtra were taken as forbidding a substitute for a son everywhere, it would be opposed to Manu (IX. 180 पुत्रमतिनिधीनाह) and Atti. चतुर्थे 'न स्वामित्वस्य ... प्रतिनिधिः' इति सायणादुच्यते । पुत्रमतिनिधिराकरणं तत् 'तन्तवे ज्योतिष्मती तामाशिषनाश्रमते' इत्यादौ अपुत्रस्य पुत्रमतिनिधिं कृत्वा आशीराशः समनिहृत्पर्यम् । अत एव क्षुतिः परस्य पुत्रो जातः स्यात् तन्तवे ज्योतिष्मतीमिति ज्ञेयात् । ... न पुनः सर्वेषां पुत्रमतिनिधिराकरणाध्यम् । पुत्रमतिनिधिः कर्तव्यः पुत्रमतिनिधीनाहुरित्यादि-स्मृतिविरोधात् । दत्त. मी. pp. 32-34. Vide तै. सं. I. 5. 8,

such medieval works as the *Mit.* (on *Yaj.* II. 133), the *Pārijāta* and *Aparārka* hold that even the son procreated on a wife married in the anuloma order¹²⁴² (e.g. the son of a brāhmana from a kṣatriya wife or of a kṣatriya from a vaiśya caste wife) was also *aurasa*. The exception was the son of a brāhmana from a śūdra wife, who was called *śūdra* or *pūratana* and distinguished from the technical *aurasa*. From the definition of *aurasa* given by all *smṛti* writers (and the dicta of such commentaries as the *Mit.*) it follows that in order to be an *aurasa* the procreation and the birth of the son must both be after the marriage. But the Privy Council held long ago in *Pedda Amami v Zemindar of Marungpuri* (1 I. A. 282, 293) that procreation after marriage is not distinctly necessary for legitimacy as a son even according to the ancient texts, that to hold so would be an inconvenient doctrine and that the Hindu Law is the same in that respect as the English Law.¹²⁴³

From the times of the *Rgveda* people prayed for the birth of an *aurasa* son and did not like to adopt the son of another. A *Rgvedic* poet exclaims (VII. 4. 7-8) 'As the wealth (son)

1242. स्वर्णजातः कुलप्रियायामौरसः । अर्धशास्त्र III. 7: सर्वर्णोऽपि संस्कृतार्णो स्वय-
मुत्पादितमौरस एव विद्यात् । *मै. घ. सू.* II. 2. 14: 'सर्वर्णं द्वित्रयं द्विजा, शुद्रश्च शुद्रा,
न तु ब्राह्मणश्च ब्राह्मणी क्षत्रियश्च क्षत्रिया, अश्वत्थ ब्राह्मणपरिवीरश्च विद्यापुत्रादेर्द्विज-
पुत्रान्वभोर्णो न स्यादिति पारिजातः ।' *वि. र.* p. 354: 'समासलोमजानी सुर्णोऽपि कादीया-
योऽस्मिन्सन्तर्भाषोऽयमप्यन्यतो जन्मजादौर्णो दासहर्तव्यं ब्राह्मण्यम् । शुद्रापुत्रश्चोऽस्मिन्
कुलर्णो नाप्यन्यत्तर्भाषोऽपि न लभते । पद्माह सत्तुः (5. 349) ।' *मिता.* on *या.* II. 133: अर्धज-
सुतोऽपि त्वीरसेषु सत्तु न वर्तिनितिरस्ति । अथर्ववेद p. 740. Vide *मद्. वा.* p. 651 for the
same view. The *सवृत्तरस* (folio 92a) however remarks, 'सौवर्त सुर्णोऽपि कादीयो
प्रकाराभावेन नैव प्रवर्जितः' . Vide n. 1130 above. The position of the *Mit.* is
somewhat remarkable. The *Mit.* admits that *niyoga* is not allowed in the
present *Kali* age (vide above p. 628) and it quotes a *smṛti* text to that
effect, but it allows the sons of anuloma marriages to be *aurasa* and to
succeed before every other kind of sons. Therefore it follows that the
Mit. either did not know the passages of *Saunaka* and of the
Nāradyāpurāṇa (pūrvaṇtha 24, 13) which forbade marriage with
asavarna girls for the twice-born classes in the *Kali* age or did not hold
them to be authoritative. द्विजानामसर्वर्णोऽपि कर्णध्वजस्तथा । ... एवाग्राध्वजं कादि-
युवे कर्णध्वजं तुर्णीयिजः ॥ शुक्लारदीपपुराण (तुर्णीय 24, 13 and 16).

1243. As this is a decision of the highest tribunal for British India it
must be taken to be the law. The Privy Council was probably influenced
by the description of such secondary sons as the *sahodha*. The decision is
in accordance with English Law and section 112 of the Indian Evidence
Act. Vide Dr. Bannerjee's 'Marriage and stridhana' p. 177 for criticism
of the P. C. decision.

of another (who is unconnected) is to be avoided, so may we be masters of wealth of our own (i. e. son of our body): O! Agni, the child of another cannot be one's offspring; it may be so in the case of the fool; do not spoil our path. A stranger, born of another's loins, though very pleasing, should not be taken, should not be even thought of in the mind (as one's son). Then he goes back to the same house (from which he came); may a vigorous, victorious, newly born son come to us! "1244

In modern times the courts generally recognize only two kinds of sons, viz. *aurasa* and *dattaka*, the other kinds of sons being held to be long since obsolete. Vide *Nagindas v. Bachoo* 43 I. A. 56, 67. But two more kinds of sons have been recognized in modern times in certain provinces only, viz. the *krtrima* in Mithila (modern Tirhoot) and the *putrikāputra* among the Nambudri brāhmanas of Malabar, both of which will be dealt with below.

Putrikāputra. The two meanings of this word given by the Mit. and others relying on Vas. have been stated above (p. 647). Kaut. III 7, Yāj. II. 128, Manu IX. 134 declare the *putrikā* or *putrikāputra* to be equal to the *aurasa* son. The conception underlying the *putrikā* has a hoary antiquity. There are traces of the *putrikā* in the R̥gveda itself. Vas.¹²⁴⁵ XVII. 16 refers to

1244. परिषदं ह्यरन्त्य रेन्तो निषर्य रावः पतयः स्वाम । न दोषो अग्रे अन्वयात-
मत्यचेतामस्य मा पयो वि दूक्तः ॥ न हि व्रमायारणः सुतेषोऽप्येदृषो मनसा मन्त्रा उ । अथा
विदोक्तः पुनरिह पयसा मे वाग्दन्मावाहेतु मयः ॥ ऋ. VII. 4, 7-8. The verses are
rather obscure, particularly the first one. The meaning given above is that
of such an ancient writer as Yāska in Nir. III. 1-3. He says that these two
verses support the view that the son belongs to the begetter (and not to
the adopter): 'तद्यथा जनयितुः मजा प्रथमधीय अचातुदाहरिष्वामः । परिषदं ।'
Compare आप. ध. सू. II. 6. 13. 5 'उत्पादयितुः पुत्र इति हि ब्राह्मणम् । The निर्णय-
सिन्धु says that the verse (न हि व्रमाय) does not really mean to prohibit the
adoption of sons but is intended to extol the *aurasa*, as otherwise it would be
opposed to the indications contained in the story of the acceptance of
Sunahśepa as a son and to the words of the latter 'may I become your son'.
योपि न हि व्रमाय ... मन्त्रा उ—इति श्रुती दत्तकनिषेधः कोऽप्यौरसातिशयार्थः, अन्यथा
ह्यनःशेषादिभिर्ग्रहयैतदितिद्विविधेधापत्तेः । उच्येतां तत्र पुत्रतामिच्छुः । मि. नि. III
पुत्राधि p. 250. उच्येतां तत्र पुत्रताम् are the words of धुनःशेष in मे. वा. 33. 5.

1245. विज्ञापते अन्नातृया पुंसः पितृमन्त्रेति यतीचीनं मच्छति पुत्रत्वम् । वसिष्ठ
17. 16: अन्नातेव ह्यस एति यातीचीं मतांस्त्वयि सन्त्ये धनानाम् । जायेव पर्य उवासी सुवासा
उवा हसेव नि रिणिते अमसः ॥ ऋ. I. 124. 7: the निरुक्त (III. 5) comments 'अन्नातृयेव
पुंसः पितृमन्त्रमिच्छुमी सन्तानकर्मणे पिण्डदानाय न पतिव । ... उवा हसना ह्य वदताम् विह-
स्यते कृपाणि ।' अमृषीं पन्ति योपितो हिरा लोहितवाससः । अन्नातर ह्य जामघस्तिष्ठन्तु
हन्तव्यसः ॥ अथर्ववेद I. 17. 1. The निरुक्त III. 4 reads अन्नातर ह्य योषास्तिष्ठन्ति
हन्तव्यसः and explains अन्नातृया ह्य योषास्तिष्ठन्ति सन्तानकर्मणे पिण्डदानाय हन्तव्योऽनः ।
इति अन्नातृयाया अनिवाह औपनिषद् ।

Rg. I. 124. 7 in connection with putrikā. That verse contains four similes in describing the advent of *Uṣas* (Dawn) 'As a woman that has no brother comes back to (her) male relations,... like a smiling damsel the Dawn unmasks objects (or her beauty)'. The Nirukta (III. 5) explains the first quarter as meaning that a brotherless maiden (after marriage) comes back to her paternal line for continuing that line and for offering *pindas* (to her paternal ancestors) and does not go to her husband's line. The Rg. in several places refers to the difficulty of getting brotherless maidens married and to the fact of their remaining in their father's house as old maidens; vide Rg. II. 17. 7 '*amājūr-ia pitroh sacī sātī*' and IV. 5. 5. The Atharvaveda I. 17. 1 states 'like brotherless sisters let these stand still with their splendours gone'. Yāska explains that, as brotherless maidens, when married, bar the way to the continuance of the family of their husbands and to offering of *pindas* (through their son), so are these red arteries &c. Yāska (Nirukta III. 4) relies for the appointment of a brotherless daughter as a son upon another very obscure verse of the Rg. (III. 31. 1)¹²⁴⁶ 'the husband declares (or promises) that the father may regard (the daughter's son) as his son's son'. The Nirukta¹²⁴⁷ (III. 5) quotes a Vedic text 'one should not marry a brotherless (girl), for she becomes (her father's) son' and holds that it expressly prohibits marriage with a brotherless maiden and also declares that such a girl becomes a son to her father. The brotherless maiden is appointed as a son by express agreement, but according to Gautama 28. 17 the opinion of one school (which he does not approve) was that a brotherless girl became a putrikā by the mere unilateral intention of the father and therefore one should not marry a brotherless maiden for fear that the father (without expressly stipulating so) might intend her to be putrikā. Manu III. 11 contains a similar caution. This recommendation not to marry a brotherless maiden continued down to the days of Yāj. (I. 53 '*aroginīm bhṛātmatīm*'). though in modern times many would prefer to marry such a girl, provided the father was well-off. Manu IX. 140 states that the

1246. शामद्विदुहितुर्नर्यं गार्दिर् अतस्य दौषिति सपर्यं । पिता यत्र पुहितुः सेकसृज्जन्तं से जग्म्वेन मलसा दूषन्ते ॥ अ. III. 31. 1. The Nirukta III. 4 explains यदाति वीदा सत्तामकर्मणे दुहितुः पुत्रभावम् । ... तस्यपुत्रात्मन इदं विषयं दौषमिति ।

1247. नात्रात्रीमुपपद्येतां ह्यस्य तद्वपति—इति अत्रातृकाया उपपन्नप्रतिषेधः अत्रातृः पित्रश्च पुत्रभावः । निरुक्त III. 5. विश्वस्य on य. I. 53 states that नात्रात्रीन् &c. is a text of the Bhāṭṭavina. संधा on मनु IX. 132 quotes नात्रात्री ... तद्वपति. अभिसन्धिमावापुधिकेत्पेकेषाम् । तत्सेवपाशोपपद्येद्वप्रातृकाम् । यौ. 28. 17-18.

three pīṇḍas that the putrikāputra offered were respectively to his mother, to the mother's father and to the mother's paternal grand-father.

The putrikāputra is no longer recognised anywhere in India except among the Nambudri brāhmanas of Malabar. Vide *Thakoor Jeebuth v. Court of Wards* 2 I. A. 163, 167, *Babui Rita v. Babu Puram* 1 Pat. L. J. 581, *Kumaran v. Narayanan* 9 Mad. 260, *Chennauth v. Palakuzhu* 25 Mad. 662, 31 Mad. 310. It appears that even a Madras authority like the Smṛticandrika¹²⁴⁸ was not aware of the prevalence of the putrikāputra in Malabar.

Kṣetrajā. This kind of son arose from the practice of *niyoga*. The origin of this practice and the limitations under which it was allowed have been dealt with at length in H. of Dh. vol. II pp. 599-607. One matter not mentioned therein is this that the Brahmapurāṇa states that kṣetrajā sons were very common among kṣatriyas since they had no progeny either because they were cursed (by sages for their misdeeds) or because they were constantly engaged in war.¹²⁴⁹ The Baud. Dh. S. II. 2. 21-23 and Kaut. III. 7 declare the kṣetrajā to be the son of two fathers, to have two *gotras* and to offer pīṇḍas to both fathers (provided there is no aurasa son born subsequently) and to take their wealth and that in offering each pīṇḍa they have to associate it with two names.¹²⁵⁰ It is to be noted that the Mit. on Yaj. II. 127 introduces the kṣetrajā as *dvyāmusyāyana*, although that word, as will be seen later on, has another significance also. The Madanapārijāta (p. 651) also regards kṣetrajā and *dvyāmusyāyana* as synonyms. The Vivādatāḍava (folio 122) states that the *dvyāmusyāyana* and sons of intercaste marriages being forbidden in Kail it does not enter into any discussion about the rules of allotting shares to them.

1248. अत एवामभिरसवर्गपुत्राणां द्वयकैतरेषां मांशपुत्राणां पुत्रिकायास्तत्पुत्रस्य च भागविधयो न निवर्धयते संगत्पुत्रस्तुष्टिपमानत्वाद् वृथा च दम्भविस्तारापन्नोः । स्मृतिच. II. p. 289. Vide u. 1130.

1249. राज्ञां तु क्षात्रद्वयानां नित्यं क्षयवतां तथा । अथ संघामर्शालां न कदाचिद्भवति ते । औरसो यदि वा पुत्रस्तथा वा पुत्रिकास्तुतः । विद्यते न हि तेषां तु विज्ञेयाः केशवब्राह्मणः । ब्रह्मपुराण quoted by अपराक p. 737.

1250. स एव द्विपिता द्विगोत्रश्च द्वयोरेव स्वपारित्यभ्याम्भसि । अथाप्युद्गाहयति । द्विपितुः पिण्डदाने स्वस्य पिण्डे पिण्डे च नागमी । त्रयश्च विज्ञाः चर्यां स्मृतं कुम्भं मुद्रति । इति । वा. ध. सू. II. 2. 21-23 ; जनपितुरसत्यपारित्यभ्याम्भे स एव द्विपितुः द्विगोत्रो वा द्वयोरेव स्वपारित्यभ्याम्भसि । अपराक III. 7 ; 'द्वयानुपपन्नत्वं विज्ञातव्यं च विभक्त्ये विज्ञेयः कलापस्यमाशेष्यते' शि. ता. folio 122.

Dattaka. This will be dealt with separately later on.

Kṛtrima—(or *kṛta*, as in Nār. *dāyabhāga* 46). According to Manu IX. 169, Yaj. II. 131, Baud. Dh. 8. II. 2. 25 and the Mit. and other works a *kṛtrima* is a person (of the same caste as the adopter) who has no parents and who is adopted with his own consent by the tempting offer of wealth. He is distinguished from the *dattaka* by the fact that he is not given by the father or mother and by the fact that his own consent is necessary (so that he must be major according to the ancient Hindu Law). Such a son is recognized in modern times only in Mithilā (Tirhoot) and the adjoining districts and among the Nambudri brāhmanas of Malabar (as held in *Vasudevan v. Secretary of State* 11 Mad. 157). Considerable case law exists about the *kṛtrima* adoption, for which Mulla's Hindu Law pp. 563-564 (9th ed.) and Mayne's Hindu law (10th ed.) pp. 293-294 may be consulted.

Gūdhaja. There is probably a reference to such a son in the Rg. II. 29. 1¹²⁵¹ 'O! Ādityas, that uphold the moral law, that are always active, keep away from me sin as a woman giving birth to a child in secret (removes it)'.

Kānina. This word is derived from the word 'kanya' (a maiden). Pāṇini IV. 1. 116 (*kanyāyāḥ kāmīna ca*) derives the word in the sense of "child of a maiden" and the Kāśikā gives Karna and Vyāsa as instances of *kānina* sons. The word *kānina* occurs in the Atharvaveda V. 5. 8 and *kumārīputra* occurs in the Vājasaneyasamhitā 30. 6. Nār. (*dāyabhāga* 17)¹²⁵² says that the *kānina*, *sahodha* and *gūdhaja* are the sons of the man who marries the mother of these and they take the wealth of the husband of their mother. The *Parijata* (q. by V. R. p. 505) states that the *kānina* and *sahodha* become the sons of their mother's father if the latter is sonless, but if he has a son then they become the sons of the husband of their mother and if both have no sons then they become the sons of both.

Kṛta—(the son bought). Vas. (17. 30-32) states that Hariścandra purchased Śunahṣepa from Ajigarta and that

1251. धृत्वता आदित्या इविरा अरे नक्तर्त्तं राक्षसिवायः । ऋ. II. 29. 1.

1252. कानीनश्च सहोदश्च युद्धार्थं यत्र जायते । तेषां बोद्धा पिता ज्ञेयस्ते च भगवतः स्मृताः । नारदः, वाचस्पति 17 : on this वि. र. p. 565 states 'अथाहुर्वो यदि मातामहस्तदा तस्य पुत्रः कानीनः सहोदश्च । सपुत्रश्चेतदा बोद्धः, उभयोरपुत्रत्वे चोभयोरिति परिज्ञातः ।'. The मद्. वा p. 562, however, says about कानीन 'यत्र बोद्धुरित्युपादानाद्विज्ञातश्चोदश्च । बोद्धुर्नो चेत्मातामहस्यैवैतद्वचनम्भवे'.

Sunahṣepa was a kṛita son. *Scayāndatta*—Vas. (17. 33-35) says that Sunahṣepa became the svayāmdatta son of Viśvāmitra as stated in the Ait. Br. (referred to above in n. 1244). *Paunarbhava* (the son of a *punarbhū*)—vide H. of Dh. vol. II, pp. 608-610 for the meaning of *punarbhū* and the remarriage of widows (pp. 611-621).

CHAPTER XXVIII

DATTAKA (adopted son)

No branch of Hindu Law in modern times has been so fruitful in litigation as adoption. There are instances, where, fifty years after a point in the law of adoption was deemed to have been settled by a Full Bench decision, the Privy Council intervened and overruled the Full Bench decision in spite of its usual practice to follow the rule of *stare decisis*. The medieval digests are full of varying interpretations of the same *smṛti* texts and the law of adoption differs from province to province according to the authoritative medieval works and modern case law. Voluminous works like those of Shastri Golapchandra Sarkar and of Mr. Kapur have been written on the subject of adoption in all its details. There is so much bewildering confusion and so much case law on the several aspects of adoption that it is only legislation that can resolve the tangled skein of the modern law of adoption. In this section an attempt will be made to present the law of adoption as evolved by the *smṛtis* and medieval works and only some important cases bearing in various ways on the ancient law will be cited.

It has been shown above (pp. 641, 657) how even in the times of the Rgveda the son of the body was eagerly sought for and how the adoption of another man's son was declared to be not worthy of being thought of. Even so late an author as Śukra (II. 31) says that the adopted and other secondary sons should never be thought as one's sons, since on seeing a rich man they desire to be adopted^{1252a}. Yet Vedic Literature contains some references to adopted sons. In the Tai. S. VII. 1. 8. 1 we come across the story of Atri,^{1252b} who gave an only son in adoption to Aurva in these words: 'Atri gave his son in adoption to Aurva

1252a. मनसापि न मन्तव्या दत्तायाः स्वसुतः इति । ते दत्तकानिच्छन्ति ब्रह्म पश् धर्मं नरम् । छुक्रभीति II. 31.

1252b. अत्रिदत्तादौर्वाप मज्जा दत्तकामाप । स शिरोचामोऽग्र्यत निर्दीर्घः प्रियिहो पातयामा स पत्नी चतुर, ब्रह्मपदचतुर्मात्रलेनापजत ततो नै तस्य चत्वारो धीरा आजायन्त सुहोता सुहाता स्वयङ्कु सुसमेकाः । तै. सं VII. 1. 8. 1. For चतुरात्र, vide कात्या. श्रौ. 23. 1. 7 and आश्व. श्रौ. XI. 1. 16-26.

who desired to have a son. He (Atri), having become empty (as it were, by giving away his only son), thought himself to be destitute of strength, to be weak and worn out (lit. stale). He (Atri) saw this *caturātra* (a sacrifice of that name lasting for four days). He made preparations for it and performed that sacrifice. Then he had four valiant sons born to him, a good Hotr, a good Udgātr, a good Adhvaryu and a good *sabhyas* (skilful speaker in an assembly)'. The story of Sunaṣṣepa in the Alt. Br. (33) shows that Viśvāmitra, though he had already one hundred and one sons, adopted Sunaṣṣepa under the name Devarāta, with the consent of his fifty-one sons (with Madbucchandas¹²⁵³ at their head), though the elder 50 sons disobeyed their father. It must be supposed that the later rule allowing only a soulless man to adopt did not apply to Viśvāmitra.

The sūtras and smṛtis contain hardly anything about the dattaka except his name (among the 12 kinds of sons) or the definition, as in Baud. Dh. S. II. 2. 24, Manu IX. 168, Yaj. II. 130, Viṣṇu Dh. S. 15. 18-19, Nar. (dāyabhāga 46). The Vas. Dh. S. is an exception. It not only gives a definition (in 17. 28-29), but is one of the earliest smṛti texts to dilate on the rules about adoption (in 15. 1-9). What it says may be set forth in one place. "Man produced from seed and blood owes his birth to his mother and father. (Hence) the mother and father have power to give, to sell or to abandon him. But one should not give or accept an only son, for, he is required to continue the line of his ancestors. A woman should neither give nor receive a son (in adoption) except with the permission of her husband. One about to take a son in adoption should, after having invited his kinsmen, having informed the ruler (of the intended adoption) and having performed in the middle part of his house a *homa* with the *vyāhṛtis*, take only him who is closely related and who is a kinsman not remote (in habitation and speech). If a doubt arises (as to the family of the person to be adopted) he (the person desiring to adopt) should treat one whose kinsmen are in a remote place as if he were a *śūdra*; for it is declared (in the Brāhmaṇa or Vedic works) 'by means of one (son, aurasa or adopted) he (the adopter) saves many.' If, after a son is taken (in adoption), an aurasa is born (to the adopter) the adopted son shall be the recipient of a fourth

1253. सहेवाच मधुच्छन्दाः । पञ्चाशता सार्धं यकः पितुः संजायते हविर्महितामहे वयम् । इत्येता सार्धं कुर्महे ताम्रमज्जो वरं वसति । इति । दे. अ. 33, 6. This is q. by the दृष्ट. मी. p. 17.

share" 1254. Manu IX. 141 refers to the adoption of a son who is not of the same gotra as the adopter and IX. 142 sets out the results of adoption. The other principal ancient texts quoted by the D. M. and V. Mayūkha are those of Atri, Śaunaka, 1255 Śikala and the Kālikāpurāṇa. The Mit. does not contain more than a few lines on the *dattaka*. It is only in such late works (belonging to the 17th century and later times) like the V. Mayūkha, the Dattakamīmāṃsā, the Samskāra-kaustubha, the Dattakaandrikā, that the *dattaka* receives an elaborate treatment. In modern times the D. M. and D. C. (which is branded as a forgery by some Bengal writers) 1256 have been regarded by

1254. धृक्प्रयोगितसम्भक्तः पुत्रयो भवति मातापितुनिमित्तकः । तस्य प्रदानविक्रयप्राप्तौ मातापितरौ प्रभवतः । न त्वेकं पुत्रं दद्यात्प्रतिपुत्रीयाद्वा । स हि सन्तानाय पुत्रेणैव । न स्त्री पुत्रं दद्यात्प्रतिपुत्रीयाद्व्याप्यवात्सल्यमाज्जतः । पुत्रं प्रतिग्रहीत्यन्यं वन्धुनाहूय राजानि च निवेद्य निवेशनमपि सखे स्वाहृतिभिर्भूत्वा अदुरवाम्भवे वन्धुसंनिहितमेव प्रतिपुत्रीयात् । सन्देशे चोग्रमे द्वरेवागच्छेत् शुद्धमिव स्वादेत् । विज्ञापयेत् शक्येन वरुणापत इति । तस्मिन्नेवतिपुत्रीति औरसः पुत्र उत्पद्येत चतुर्वर्ण्यमासीत् स्वाहृतकः । वसिष्ठ 13. 1-9. The Band. Gṛhyasūtrasūtra II. 6 has the first five and the last sūtras out of these. In Aparārka pp. 737-738, V. R. p. 568, the V. Mayūkha p. 112, V. P. pp. 477-478 and in the D. M. this passage is quoted. The V. Mayūkha reads स हि चापते पुत्रवत् for स हि...पुत्रेणैव, while the वि. ता. (folio 124) reads स हि...पुत्रेणैव. The Mit. on Yāj. II 130 quotes a portion of this passage. On स हि सन्तानाय the V. R. p. 369 explains 'सन्तानोऽपेदे हि पिण्डोदकः कृपा निवृत्तिर्मेहान्दोष इति वक्राक्षः'. Aparārka pp. 737 and Sm. C. II. p. 192 read असंनिहितमेव and explain respectively 'असम्प्रविष्टमेव' and 'संनिहितप्राप्तपुत्रादिपतिरिक्तमेव पुत्रीयात्', but these explanations are not good, since the brother's son is recommended as the best for adoption according to others. Therefore the explanation of V. R. p. 569 that असंनिहितमेव means असंनिहितमपि is preferable. The whole of this passage of Vas. except the last sūtra is quoted in *Ganga Sahai v. Lekhras* 9 All. 253 at p. 300 and the first five sūtras in *Tulshi Ram v. Behari Lal* 12 All. 328, 335 and *Jogesh Chandra v. Nrityakali* 30 Cal. 965 at p. 972.

1255. Vide Appendix for Śaunaka's verses on adoption and for Band. gṛhya-sūtras.

1256. As to the tradition among Bengal Pandits that the Dattakaandrikā was fabricated by a pandit called Raghumanj to support the claim of an adopted son to a *Rāj*, vide Golapchandra Sarker's Tagore Law Lectures on adoption (2nd. ed. of 1916 pp. 123-126). It may, however, be noted that in *Bhagwan v. Bhagwan* 17 All. 294, 313 Mr. Justice Banerji refused to place any reliance on the tradition.

the Privy Council as of the highest authority in matters of adoption. In *Collector of Madurai v. Mootoo* 12 Moo. I. A. 397 at p. 437 the P. C. observe: 'Of the Dattakamimāṃsā of Nanda Pandita and the Dattaka, Candrikā of Devanna Bhatta, two treatises on the particular subject of adoption, Sir William Macnaghten says that they are respected all over India; but that when they differ the doctrine of the latter is adhered to in Bengal and by the southern Jurists, while the former is said to be the infallible guide in the provinces of Mithila and Benares'. But Jolly (T. L. L. p. 168) gives a far more correct estimate of the value of the D. M. when he says 'It is simply a misfortune that so much authority should have been attributed in the courts all over India to such a treatise as Nanda Pandita's Mimāṃsā which abounds more in fanciful distinctions than perhaps any other work on adoption and it is high time that the numerous other treatises on adoption should be thoroughly examined and given their due weight'. In *Bhagwan v. Bhagwan* 26 I. A. 153 at p. 161 the P. C. observe 'To call it (the Dattakamimāṃsā) infallible is too strong an expression and the estimates of Sutherland and of West and Bühler seem nearer the true mark; but it is clear that both works must be accepted as bearing high authority for so long a time that they have become embedded in the general law'. Yet even these works have been set at naught and departed from by Courts in India on many points as will appear in the sequel.

The principal matters to be discussed under adoption are: object of adoption, persons that may legally take in adoption, persons that may give in adoption, persons that may be taken in adoption, the requisites and ceremonies of adoption and the results of adoption.

The objects of adoption—Atri (verse 52) quoted above in note 1231 declares that that man alone who has no son should always secure a substitute for a son with all possible effort for the sake of securing the offering of pindas (funeral and śrāddha cakes) and water. The D. C. quotes this verse and also another ascribed by it to Manu¹²⁵⁷ in which the object of adoption is said to be twofold, viz. securing spiritual benefit from the pindas and water (offered by him) and perpetuating the name and family of the adopter. In one of the latest cases on adop.

1257. लघुल मनुः । अद्वयेन पुत्रः कार्ष्णं पादकुं तादकुं प्रदत्तः । पित्रोदककिंवाहेतो-
र्नामसङ्कीर्तिनाय च ॥ दत्त. च. p. 2.

tion that revolutionized the law the Privy Council¹²⁵⁸ emphasize the peculiar religious significance that has attached to the son among all classes of Hindus, refer to the 9th chapter of Manu verses 106, 107, 137, 138 of which are instinct with this doctrine, hold that the foundation of the Brahminical doctrine of adoption is the duty which every Hindu owes to his ancestors to provide for the continuance of the line and the solemnization of the necessary rites and that in this doctrine the devolution of property, though recognized as the inherent right of the son, is altogether a secondary consideration.

Persons who can give in adoption—The primary right to give in adoption is that of the father, who can do so without consulting the mother.¹²⁵⁹ The mother cannot without the husband's permission give her son in adoption while the father is alive and capable of consenting. But the mother alone can (as said by Manu IX. 168, Yāj. II. 130) give her son in adoption if the father be dead or if he is incapable of giving consent or has entered the order of ascetics, provided he has not expressly or impliedly prohibited her to do so. If both parents are dead no one else, not even the paternal grand-father or the step-mother or a brother, can give a man in adoption. If A has a son B and is then given in adoption by his mother into another family, it was held in *Martand v. Narayan* that A still retained his power as father to give away B in adoption (1 L. R. 1939 Bom. 586 F. B.). This decision has been dissented from by the Nagpur High Court in *Sharadachandra v. Shantabai* (1 L. R. 1944 Nag. p. 544, F. B.). But the reasons given by the Nagpur High Court are not convincing and the judges seem to be influenced by the dictum of the P. C. that the adopted son is

1258. Vide *Amarendra Man Singh v. Sanatan* 60 I. A. p. 242. Though it may be conceded that in the majority of cases the object of the adopter is religious, the object of the giver and of the person adopted (if he is grown up) is far from religious. The main object of the latter two at least in modern times is to secure wealth without effort and hardly any religious motives enter into their minds. No one gives a son in adoption to a poor man, though a poor man has a soul to save as much as a rich man. Besides in adoption by widows, their motive is very often far from religious. They often adopt out of pique against their husband's brothers or nephews and for benefiting themselves monetarily by making agreements with the adopted sons to share the property with them.

1259. अत एव माता पिता वा दद्यातामिति मन्त्रना मातुर्भर्तृवृत्तान्मापेक्षताज्जगद्व्यर्थं रूपमुत्तमानैरेवेष्टा विदुर्मन्त्रमन्त्रं जनकतामात्मनादुर्भयोदुष्टपक्षमभिव्यक्त्य पूर्वपूर्वास्तरता-दुष्टपक्षेतरमभिव्यक्त्य । दृष्ट. मी. pp. 119-121.

just like an aurasa son except in a few well defined cases. It cannot be supposed that the P. C. knew all the texts of the *nibandhas* dealing with adoption. Though the Bombay High Court held in *Putalabai v. Mahadu* 33 Bom. 107 that a mother did not by her remarriage forfeit her right to give in adoption her son by the first husband, that decision was subsequently overruled in *Fukirappa v. Saratnaga* 23 Bom. L. R. 482 (F. B.) which decided that after remarriage a widow has no power to give in adoption her son by the first husband. The same High Court held in *Shamsing v. Shantabai* (35 Bom. 551) that a Hindu father, who, after the birth of a son, became a convert to the Moslem faith, did not by reason of his conversion lose his power of giving his son, who remained a Hindu, in adoption though the physical act of giving in adoption, being accompanied by religious ceremonies, may have to be delegated by him to a Hindu. This decision was based on the Caste Disabilities Removal Act of 1851 (for which see above p. 547, n. 1031). This decision is against the spirit of the ancient Hindu Law.

What persons may adopt a son.—Every male Hindu, who is of sound mind and has attained the age of discretion though he may be a minor according to the Indian Majority Act (III of 1875), can take a son in adoption provided he has no son, grandson or great-grandson, natural or adopted, living at the time of adoption. The word 'aputrena' in the verse of Atri (quoted above in n. 1331) is explained by the D. M. as meaning¹²⁶⁰ one who had no son at all or whose son is dead and as including the grandson and great-grandson. It would appear from a Bombay decision that even if a Hindu has a son, grandson or great-grandson disqualified from inheriting on the grounds mentioned above he cannot adopt (vide *Bharmappa v. Ujjangunda* 46 Bom. 455). In the *Dattasiddhāntamāñjarī* of Balakṛṣṇa (folio 11b) it is stated that if the aurasa son of a person is congenitally blind, dumb or deaf he can take a boy in adoption. In *Krishnaji v. Raghavendra* I L. R. (1942) Bom. 492 it has been held, relying upon 46 Bom. 455, that a widow

1260. अनुभोऽनातपुत्रो सुतपुत्रो वा । अनुभो सुतपुत्रो वा पुनार्थं सत्पुत्रोप च—इति
श्रीमन्मनीषात् । ... अनुभवेण इति पुत्रपदं पौत्रमपौत्रपर्यप्यलक्षणम् । इमेन लोकाज्जयति
(समु. ५. ३२२) इति पांशादिना विभिन्नलोकप्रतिपद्वेनेन नापुत्रस्य लोकोन्नीतिपाद्यलोका-
परिहारात् । वृत्त. मी. p. 3 and p. 18; अत्र पुत्रपदं पौत्रमपौत्रपर्यप्यलक्षणम् । तद्वारपि
पित्रपुत्रपुत्रमपौत्रपर्यप्यलक्षणम् । वृत्त. अ. p. 3; अत एव जन्मान्धमूकवधिरसप्तपुत्रवतः पित्र-
पुत्रमपौत्रं सङ्गच्छन्ति । वृत्तसिद्धान्तमञ्जरी folio 11 b.

idea is that the permission (*anujñāna*) of the husband is not required to be given just at the time of the adoption and that it may be given long before the actual adoption. (3) In Madras a widow may also adopt without¹²⁶³ her husband's authority, provided she secures the consent of the father-in-law or (if the latter be dead) of all the co-parceners of the husband, if her husband died as a member of a joint family, and if the husband was separate at the time of his death, then the consent of the father-in-law or (if he were dead) of a substantial majority of her husband's nearest sapindas. In this view the word 'of the husband' (in Vasiṣṭha) is taken as only illustrative and not literally. (4) The Vyavahāramayūkha,¹²⁶⁴ the Nirṇaya-sindhu, the Samskāra-kaustubha, the Dharmasindhu, that are regarded as authoritative in Bombay and Western India, hold that the passage of Vasiṣṭha refers only to a wife whose husband is alive and that a widow may adopt without the husband's authority. According to this school the husband's authority to adopt is always to be presumed, unless he has prohibited his widow expressly or by necessary implication from adopting. The D. C. appeals to the general maxim 'another's (or the opponent's) view if not dissented from may be taken as having been approved'.

1263. In *Balsubramanya v. M. Subbaya* L. R. 65. I. A. 93 at p. 99 the Privy Council say: 'their Lordships are not laying down that the requisite authority must necessarily be express but they agree with the District Judge that in order to constitute an implied authority there must be circumstantial evidence of a cogent character'. Vide *The Collector of Madras v. Mootoo* 12 Moo. I. A. 397 pp. 435-36 where three of these four interpretations are pointed out.

1264. भर्तृशुद्धौ तु सधवाया एव दृढार्थत्वात् । विधवायास्तु तौ विनापि विदुस्तदभावे
 क्षातिनामाज्ञया भवति । ... अतो वर्यामवसथाया भर्तृशुद्धौ याता सेवाशाल्यते न त्वपूर्वा
 विधीयते । अतो विधवाया भर्तृशुद्धौ विनाप्यधिकारः । स्व. मधुसू. p. 113; तत्रैव नमिष्ठः ।
 न त्वैवैकं पूर्वं -- भर्तृशुद्धौ । इदं च भर्तृशुद्धौ । अन्वया दृष्टान्तात् विता वा च स दृष्टो दृष्टिना
 स्पृष्ट इति वस्तुस्थानस्यचोविरोधः स्यात् । इति मन्त्रिद्वयपलक्षणम् । निर्णयसिन्धु III पूर्वार्धे
 p. 249; सिधाम्तु जीवति भर्तृरिति तद्वृत्तमर्थः । प्रोदिते सुते वा तद्वृत्तं विनापि । पश्चात् नमिष्ठः ।
 'न त्वौ ... भर्तृः । इति । अनुमतिश्चाप्यतिषेधो भवति । अप्यतिषेधे परममनुमते भवतीति
 ग्राह्यात् । सुत. च. p. 18; तच्छास्त्रादित्यक्तान्यज्ज्ञातादिधर्मोचरणे इव पुत्रपतिप्रद्वेपि ना-
 पुत्रस्य लोकलोकीत्यादिनामाप्यज्ञातदेव विधवाया अधिकारः । उक्तविधवाकर्मकारः पुंभि-
 रिति श्रीभिरपि सधवाभिर्विधवाभिश्च कार्यः । वर्याया वा सुतपुत्रा वा पुत्रार्थं सधुपोष्य चेति
 शौनकीयवचनविशेषवचनात् । से. की. p. 160. It will be noticed that the से. की.
 reads वर्याया वा सुतपुत्रा वा for अनुमते सुतपुत्रो वा in Śaunaka's text which is the
 reading of all other works, the former being probably a fabrication inserted
 to support widow's claims to adopt. The D. M. p. 3 notices the reading
 वर्याया सुतपुत्रो वापि in Śaunaka's text. For the maxim अतिविद्वद् &c. vide
 शाङ्करभाष्य on वेदान्तसूत्र II. 4. 12.

There is a large volume of case law about the construction of the authority to adopt, about the rights of co-widows in the matter of adoption, about the limits of a widow's power, which are deemed to be outside the purview of this work.

As regards the power of a widow to adopt in the Bombay school, when her husband was joint at the time of his death, the case law has fluctuated from time to time. Only a few cases may be referred to here. In *Ramji v. Ghamau* 6 Bom. 498 (F. B.) a Full Bench of the Bombay High Court held that a widow, whose husband was a member of a joint family at the time of his death, could not adopt when she has not the authority of her husband or the consent of the husband's undivided coparceners. After this decision had stood for 50 years the Privy Council held in *Bhimabai v. Gurunathgouda*¹²⁶⁵ L. R. 60 I. A. p. 25 that the Full Bench decision had already been overruled in *Yadav v. Namdeo* (48 I. A. 513) and that a Hindu widow can adopt without the consent of her husband's

1265. In *Bhimabai's* case the Privy Council purport to follow the case of *Rakhmabai v. Radhubai* 5 Bom. H. C. R. (A. C. J.) p. 181. But in that case the husband was separate at the time of his death. The P. C. however point out that in *Yadav v. Namdeo* (48 I. A. 513 at p. 529) it was said that the decision in *Rakhmabai's* case was not based on the fact that the husband was separate at his death or on the fact that the widow when she made the adoption had the estate vested in her and it was held that that decision was equally applicable where the husband was joint. Apart from the fact that the decision of the P. C. is opposed to the general sentiment of Hindu society at present, with the greatest respect two criticisms have to be offered against the decision in *Bhimabai's* case. The passage of the *Vyavahāramayūkha* relied upon in *Rakhmabai's* case and in *Bhimabai's* case has not been correctly understood. The *Mayūkha* was combating the view of others that a widow cannot adopt at all. Therefore he tried to establish that a widow can adopt without her husband's authority. But the *Mayūkha* did not say expressly that she can adopt without any body's authority or that she can adopt even in a joint family without the consent of the coparceners or even against their wishes. On the contrary if we look at the whole context where he quotes *Yāj.* I. 85 and a verse of *Kāt.* (930) it would appear that he meant to convey that the consent of the father of the husband or of his kinsmen would be necessary. Further, no one drew the attention of the P. C. to another passage of the *V. Mayūkha* where it summarizes the rite of adoption and states 'Women whose husbands are alive are entitled to adopt with the permission of their husbands; failing the husband, a woman can adopt with the permission of the (husband's) father and the rest'; 'स्त्रीयां सपतनानां भर्तृवृत्तना भर्तृभावे पित्रादीनाम्' *श्रु. मयूख* p. 120.

co-parceners, when the husband was a member of a joint family at the time of his death. This decision was carried further by Amarendra's case (60 I. A. 242) by holding that when a widow, who had authority to adopt, adopted even after the estate had devolved on a male collateral heir such adopted son would take the estate and deprive the heir of it. As any widow was held to be able to adopt in Bombay without anybody's consent, hundreds of adoptions have taken place, which came and are coming before the courts. Another Full Bench case held that when a Hindu coparcenary came to an end on the death of the last surviving coparcener and the family property became vested in his heir, a subsequent adoption by the widow of a predeceased coparcener was valid, but it did not revive the coparcenary nor did it vest the property of the former coparcenary in the adopted son (*Balu v. Lahoo* I. L. R. 1937 Bom. 508). When a co-parcenary was broken up by partition among the members, it was held¹²⁶⁶ that the widow of a coparcener who died long before the partition cannot make a valid adoption and reliance was placed on a passage of the *Viramitrodaya* (quoted below).¹²⁶⁷

But these decisions have been dissented from in *Bajirao v. Ramkrishna* I. L. R. (1941) Nagpur 707 and in *K. R. Sankarlingam Pillai v. Veluchami Pillai* I. L. R. (1943) Mad. 309 (F. B.), where it has been laid down that when the surviving coparceners of a joint Hindu family were in possession of the joint family properties which they obtained in a partition among themselves after the death of a coparcener and subsequent to the partition a valid adoption was made to the deceased coparcener by his widow the adopted son was entitled to reopen the partition. They rely by way of analogy on the provisions of Ysj. that the posthumous son can reopen a partition already made and also on that of the disqualified heir when the disqualification is removed and on the dicta in some cases that an adoption dates back to the date of the death of the adoptive father. But no *smṛti* text and no digest has extended the exceptional rules about the posthumous son and the disqualified heir to a son

1266. Vide *Hirachand v. Soffal* I. L. R. 1939 Bom. 512 and *Irappa v. Rachayya* I. L. R. 1940 Bom. 42.

1267. अत्र ब्रूमः । अनेकवृत्तीनि सम्पत्तिविशेषाः स्वयमेव स्थापयन्ति च सम्पत्तेः । परस्पर-विभामागते परस्परस्वाभ्याम्पद्विषयत्वे तानि नश्यन्ति । परस्परपारिव्राज्यादिनेवेति न काच्यवृत्तयस्ति । स्वस्वप्राप्तमपीदमेव, अन्वयेकदेशे उत्पादनमित्येव वदेत् । अत एव विनाश-मात्रकल्पना न तु स्वत्वान्तरीयादकल्पना । अ. अ. pp. 431-32.

adopted after partition. Their reasoning as regards the Bombay cases is not satisfactory. It amounts to this that as between the separating co-parceners the coparcenary may be extinct but as to the subsequently adopted son it exists i. e. a coparcenary is extinct and existing at the same time, which, to use no stronger expression, appears rather strange. Besides the general rule is that partition is made only once (Mann IX, 47). The cases of the posthumous son and of the disqualified heir are expressly provided by way of exceptions. The usual rule is that exceptions are to be strictly limited to the matters expressly stated and are not to be extended by analogy to cases not covered by the words of the exception and that other cases are governed by the general rule. It is a canon of interpretation in Hindu Law that a special text forming an exception to a general text should be construed strictly and applied only to the cases clearly falling within it (*Ganga v. Chandrabagabai* 32 Bom. 275, 283, *Hannant v. Ganesh* 43 Bom. 612, 624). Further, a Hindu widow is not compelled to adopt at any particular time; she may adopt at any time during her life. In *Raje Vyankatrao v. Jaywantrao* 4 Bom. H. C. R. (A. C. J.) 191 it is noticed that the widow in that case adopted 71 years after her husband's death. If the reasoning of the learned Judges of Nagpur and Madras is correct then when three or four generations have succeeded to the separating coparceners, an adopted son can reopen the partition after three quarters of a century. This result, to say the least, would be most unreasonable. The Nagpur High Court observes that every Hindu widow is a potential mother. This is a fiction which has been carried too far by that court and by the Privy Council. A woman in the order of nature can hardly ever have an *aurasa* son beyond the age of fifty or so, but when a fiction is employed a woman can bring into existence a son even when she is 80 or 90. The Privy Council have approved of the Nagpur and Madras decisions recently in *Anant v. Shankar* 46 Bom. L. R. 1. They hold that a Hindu family cannot be brought to an end while it is possible in nature or law to add a male member to it or while there is still a potential mother if that mother in the way of nature or law brings in a new member. In *Ramchandra v. Shankar* 47 Bom. L. R. 121 (F. B.) the Privy Council decision in *Anant v. Shankar* has been followed and it is held that the decision in *Balu v. Lahoo* has been expressly overruled by the Privy Council. The consequences of these latest decisions will be most disastrous for Hindus. In Amarendra's case the P. C. state that there

must be some limit to the power of a widow to adopt or some conditions in which it would be contrary to the spirit of the doctrine to admit its continuance or inequitable in the face of other rights to allow it to take effect (L. R. 60 L. A. 242 at p. 249). In *Madana Mohana v. Purshothama* L. R. 45 L. A. 156 the P. C. approving of *Ramkrishna v. Shamrao* 26 Bom. 526 (F. B.) held that, when a man dies leaving a widow and a son and that son dies leaving his own son or a widow to continue the line by adoption, the power of the former widow comes to an end and cannot be revived; that is, they were prepared to hold that the grandmother succeeding to her grandson who died unmarried could not make a valid adoption and allowed the grandfather and his ancestors to remain without the religious benefits that a son adopted by the grandmother would have conferred (in spite of the 9th chapter of Manu on which they rely in Amarendra's case). According to the recent rulings any widow whose husband died a member of a joint Hindu family may adopt at any time even when the other members become separate and may remain separate for 50 years or more and yet a large slice of the estate may be taken away after several generations have succeeded, laboured and acquired a vast estate. Further, it is not clear how far the P. C. will go in their solicitude for the adopted son. Suppose three brothers separate and one of them sells the property that came to his share. If the partition is to be opened for the benefit of a son subsequently adopted by a predeceased member's widow, will the purchaser be affected or not (supposing the sale is within 12 years of the adoption)? Supposing that the last surviving member of a family dies leaving a married daughter and a predeceased son's widow and the daughter inherits an absolute estate (as she does in Bombay) and remains in possession for 30 years, is it meant that a son thereafter adopted by the widowed daughter-in-law can divest an estate vested for thirty years in a married daughter who is not a member of the family at all after her marriage? The recent P. C. decision in *Anant v. Shankar* appears to indicate that whatever the length of time the adopted son will oust a collateral to whom the estate may have gone by inheritance. Intending purchasers have become afraid that there is no knowing how far the P. C. may go. These decisions will lead on to hurried sales of joint family property at whatever price may be fetched immediately a coparcener dies leaving a widow. The result of the several decisions of the P. C. has been that properties of

Hindu families in which widows of predeceased coparceners exist are not easily saleable and do not yield their proper market value. The inroads on the ancient joint family system of the Mitaksarā have been so many that only the shell remains; the burdens are there, but the soul is gone, what with the right of each coparcener to alienate his share for consideration, the Gains of learning Act, Act 18 of 1937, the decisions of the P. C. about adoption, sec. 39 of the Transfer of Property Act. It would be better if the Legislature declared that the joint family system of the Mitaksarā type has been abrogated, if all the innovations introduced by legislation and judicial decisions are to be kept intact.

A widow who has attained years of discretion may adopt although she is a minor according to the Indian Majority Act (of 1875). It has been held in Bengal that an unchaste¹²⁶⁸ widow cannot adopt, but in the Bombay Presidency it has been held that a *śūdra* widow, though unchaste, may make a valid adoption.¹²⁶⁹ If a man dies leaving a widow D and two sons A and B, who form a joint Hindu family, and subsequently A dies leaving a widow C and his brother B, and if B dies unmarried and the mother D succeeds as heir to her unmarried son B, she has still the power to adopt a son. The duty of continuing the line was cast upon both A and B and not on A alone and therefore when A dies that duty is cast on the surviving coparcener B. Therefore the proposition laid down in *Ramkrishna v. Shanwan* cannot apply and the mother of B can adopt (vide *Anant v. Dnyaneshwar* 46 Bom. L. R. 353).

Who may be adopted.

The person to be adopted must be a male according to the *Vyavahāramayūkha*¹²⁷⁰ which relies on the analogy of *upanayana* (that only a male undergoes, as stated in the ancient text '*astavarṣam brūhmaṇam-upanayita*'). This has been followed by

1268. Vide *Sayamalal v. Saudamini* 5 Beag. L. R. 362.

1269. Vide *Basvan v. Mallappa* 45 Bom. 459.

1270. दूतकस्य पुमानेव भवति न कन्या । स ज्ञेयो दूतिनः सुतः (मनु १. ३५८) — इति सङ्गासंज्ञिसम्बन्धबोधकवाक्यमतेन स इति सर्वनाम्ना मातापितृकतुल्य-मीतिजलद्वयकापक्ष-मित्रकदानकर्मीभूतमजालीपदुंस एव—अष्टवर्षं ब्राह्मणमुपनयति तमरणापयति—इति तस्य-द्वेवाष्टवर्षं—ब्राह्मणपुंस्त्वोपनयनादिसंस्कृतस्यैव परामर्शात् । १२. मयूख pp. 105-109. For अष्टवर्षं ब्राह्मणमुपनयति, vide आप. सू. IV. 10. 2 and सुबुद्धनाचार्य's gloss thereon. The धर्मसिन्धु says: एवं दूतकस्याथा अपि स्वीकार उक्तमिदं कथं । तत्र परमोक्तोपस्थादा वदते विनाहं सोऽष्टवर्षजने नाम्नात् । दूतकालपोरमपि दूतकस्यैव पितृधन-भाविनी । (III पूर्वार्धे p. 162).

the Indian Courts.¹²⁷¹ But the D. M. (pp. 112-116), Sam. K. (p. 188) and Dharmasindhu¹²⁷² relying upon such instances as that of Santā, the daughter of king Dasaratha (who was adopted by king Lomapāda) and of Prthā, who was the daughter of Śura and was adopted by Kuntibhoja, say that even a girl may be adopted. Pannalal in 'Kumaun local customs' states that a girl may be adopted as a daughter in Kumaun by custom. The person to be adopted must be of the same caste as the adopting father. Yaj. II. 133, providing that the twelve kinds of sons that offer the pinda and take the wealth one after another in order, applies only to sons of the same caste. Śaunaka also requires sameness of caste. Manu IX. 168 employs the word 'sadrām', which was interpreted by Medhātithi as meaning 'similar to the adopter in qualities and not in caste'. Medhātithi¹²⁷³ expressly states that a brāhmaṇa may adopt a ksatriya boy. But Kullūka and the other commentators of Manu, the V. Mayūka and other works hold that the boy must be of the same caste. The Sam. K. p. 150 and Dharmasindhu go a step further by saying that even a brāhmaṇa should adopt another of the same country. The Vāyupurāṇa (99. 137-139) narrates that Bharata, son of Duśyanta, adopted Bharadvāja, son of Brhaspati and a brāhmaṇa, who then became a ksatriya.¹²⁷⁴ The courts accept the view of Kullūka and the rest. It is likely that courts may allow a boy from a subcaste of each of the four principal varṇas to be adopted by a man belonging to another subcaste of the same varṇa.^{1274a} Śaunaka and Vṛddha-Yaj. q. by D. C. provide

1271. Vide *Gangabai v. Anant* 13 Bom. 690, where the Vyavahāra-mayūka is expressly referred to and followed in preference to D. M. and Samakīrakasutubha. Vide also *In re Munshiram* 12 Lahore 658 at p. 661.

1272. For the quotation from the स. कौ. vide H. of Dh. vol. I. p. 449 n. 1119. The D. M. adds passages from the स्कन्दपुराण, लिङ्गपुराण, हरिवंश and आदिपर्व. Vide आदिपर्व 111. 2-3 (cr. ed. chap. 104) for the adoption of कुली, and रामायण, बालकाण्ड, 9th chap. for that of क्षत्रा.

1273. सहस्रं न ज्ञातिवः किं तर्हि कुलादसुपैतुषुः । क्षत्रियादिरपि ब्राह्मणस्य पुत्रस्यो पुत्रपते । मेधा. ०० मनु IX. 168. विद्यादीनां वर्णानां समानवर्णे एव । यद्यपि देशभेदमनुक्त-सुनरत्नान्ध्रवादिनां समानवर्तीष एव । धर्मसिन्धु 111 पुनर्पर्व p. 138.

1274. ब्रह्माङ्गु दिव्यो भरद्वाजो ब्राह्मणालक्षितोऽभवत् । द्विमुत्पाद्यमानस्य स सुतो द्विपुत्रकस्तु ते ॥ वायु 99. 137. द्विमुत्पाद्यन seems to be a corrupt form of द्विमुत्पाद्यन.

1274a. In *Raj Nandini v. Atwini Kumar I.* L. R. (1941) 1 Cal 457 the adoption of a Vaidya child by a Kayastha was upheld in the Sylhet district, as both are now treated as śūdras.

that the *dattaka* may be of a different caste, but that such a son will not take the wealth.¹²⁷⁵ In spite of the words of Vas. 15, 3 and of Śaunaka (that one having an only son should not give him) the courts have held that even an only son may be given or taken in adoption and that the words of Vasistha are merely recommendatory. Vide *Sri Balusu Gurulingaswami v. Sri Balusu Ramalakshmamma* 26 I. A. p. 113 and *Vyas Chimantal v. Vyas Ramchandra* 24 Bom. 367 (F. B.). In connection with the force of the words of Vas. 15, 3-4 stating why an only son should not be given or taken, Jaimini's rule contained in what is called the 'hetuvan-nigadādhikarapa'¹²⁷⁶ (Jai. I. 2, 26-30) came in for very exhaustive discussion in *Beni Prasad v. Hardai Bibi* 14 All. 67 (F. B.) and *Radha Mohun v. Hardai Bibi* 26 I. A. pp. 113, 146. There are several Vedic passages like this, 'he offers the grains into the fire with a winnowing basket, for food is prepared with the help of it' (Tai. Br. I. 6, 5). The question is whether such sentences put forward a reason for what is enjoined in the preceding portion or whether they are intended merely as *arthavādas* (i. e. for the praise of what is stated in the preceding part of the passage). Jaimini concludes that they are for the purpose of praise¹²⁷⁷ alone.

1275. यदि स्वाद्व्यजातीयो दृहीतोपि हतः कश्चित् । अंशभाजं न ते कुप्याच्छीकरय मर्तं हि तत् ॥... एकमाह बृहदारण्यकः । सजातीयः सुतो ब्राह्मः पिण्डदाता न रक्ष्यमाह । तद्वन्ने विजातीयो वर्धमावकः स्यूतः । बालाच्छादुनमार्च्य तु लभते स तद्विधिभः ॥ इति । बृ. च. p. 7 ; दृ. च. मी. quotes the verse यदि स्वात् & as Śrīnaka's (p. 104) and also as बृहद्गीता's (p. 52).

1276. हेतुर्वा स्वाद्व्यवशोपयति-पाद्यं । स्तुतिस्तु शब्दद्वर्णवाद्युचोदना च तस्य । जै. I. 2, 26-27 ; अथ ये हेतुवर्णवाद्याः पूर्वेण ब्रूयन्ति तेन ब्राह्मं क्रियत इत्येवमाद्यन्येभ्यः सम्बन्धः । किं स्तुतिस्तेषां कार्यमुत हेतुरिति । किं प्राप्तिम् । हेतुः स्वाद्व्यकरणे होमस्य । अपरः इह ये हेतुवर्णवाद्यान्ते हिशब्दादिभिर्न च परमाणोस्तस्ते उदाहरणम् । तद्व्यावर्तिकं.

1277. Nigada means 'a sentence or sacrificial formula' and 'hetuvat' means 'containing a word or words (like 'hi') which are generally used to indicate a reason' for a statement already made. In preparing food from grains, the *śūrpa* is required for winnowing them to free them from husk &c., as also are required the pan or pot for boiling the grains and a ladle for stirring the grains when they are being boiled. The *Śruti* passage provides that with the help of a *śūrpa* the *boma* is made of *Karambhapātras* (pots full of husked grains of *yava* slightly fried on the Dakṣiṇa fire, ground and mixed with curds) in the *Varuṇapraghāsa*, one of the *cāturmāsya*s. Vide H. of Dh. vol. II. pp. 1095-96 and 1098 for the *śūrpa* used as a *juhū* ladle. If the latter part of the passage contains a reason for the first part, then it would follow that the pot or ladle (both of which are useful in getting food

(Continued on the next page)

The eldest son also should not be taken in adoption, since, as the Mit. (on Yaj. II, 130) puts it, it is the eldest son alone who is the foremost in serving the purposes of a son as regards his genitive father acc. to Manu IX. 106 which says 'a man becomes one having a son (a father) by the mere fact of the birth of his (first) son and becomes free from the debt owed to

(Continued from the last page)

prepared) may equally be used instead of the śūrpa. But the object of the latter half is not to assign a reason, but rather to praise and recommend the śūrpa as the means of making the homa and so nothing but the śūrpa can be employed in making the offering. The Veda is the final authority in all matters pertaining to sacrifice, it does not stand in need of giving reasons for its prescriptions but it may enlogise an act to induce people to perform it. Therefore in the *betuvan-nigadādhikaraṇa* Jaimini does not lay down (as thought by Mandlik and by the High Court in 14 All. 67, pp. 73, 84, 125) that when a text is supported by a clause containing words of reason, it should be regarded as merely recommendatory (and not obligatory), but what Jaimini lays down is that clauses containing words generally meaning 'reason' are to be construed as *arthavādas* (praises) of the obligatory rule contained in a previous clause. Mr. Mandlik says (p. 499 of his 'Hindu Law') 'It is a rule of the *Pūrvamīmāṃsā* that all texts supported by the assigning of a reason are to be deemed not as *vidhī* but simply as *arthavāda* (recommendatory). When a text is treated as an *arthavāda* it follows that it has no obligatory force whatever. Śābarasvāmī constructs an *adhi-karaṇa* on this head which he calls '*hetuman-nigadādhikaraṇa*' (quoted in 14 All. 67 at p. 73). This is entirely wrong as shown above and the *adhi-karaṇa* is not called 'hetuman etc.' but 'betuvan etc.'. Acc. to Jaimini's rule the words of Vas. 15. 3 '*naikam putram*' contains a *vidhī* (an obligatory rule), while the following clause containing the word 'hi' (indicative of a reason) '*sa hi santānāya pūrvayām*' is merely an *arthavāda*, which praises the *vidhī* by emphasizing the importance of a son. Sarkar in his '*Mīmāṃsa Rules*' (pp. 175-176) correctly represents the meaning of Jaimini, though in somewhat obscure language. The decisions in 14 All. 67 and 26 I. A. 113 are correct so far as the Mit. and the *Mayūkhā* are concerned, though the judgments in the former case are wrong in what is regarded to be the meaning of Jaimini's aphorisms constituting '*betuvan-nigadādhikaraṇa*'. The Privy Council in 26 I. A. 113 at p. 146 refer to the supposed rule of Jaimini that all precepts supported by the assignment of a reason are to be taken as recommendations only, but they express themselves guardedly and say that the rule is rather startling and they would not admit it to be true unless they made an intimate study of the smṛtis. The commentaries will make the *Pūrvamīmāṃsā* position clear. असमर्थो पुनः शूर्पं स्तुवते । तेन शार्ङ्गं जितम् इति वृत्तान्ताच्चापानं न च वृत्तान्ताच्चापनाप किं तर्हि वरीच्येनावेन । तस्माद्देवस्य विद-स्यापि स्तुतिरेव कार्यमिति । इत्यत्र on जै. I. 2. 30. The शास्त्रदीपिका states 'न च वेदेनोक्तमात्रं शूर्पस्य दोमसाधनत्वं हेतुमपेक्षते वेदस्यैव तत्र समाजन्तात् । अर्थादुक्तव्येतिः प्रतीत्यनर्थोऽयम् । तस्मादर्थवत्त्वम् ॥'.

the *pitr̥s*'. But in modern times this rule is taken to be only recommendatory and the adoption of the eldest son is held valid as also that of an only son¹²⁷⁸. The V. Mayūkha (p. 108) states: acc. to the Mit. the prohibition to give the eldest son affects only the giver but not the adopter and he criticizes the Mit. that Manu IX. 106 does not forbid the giving of the eldest son, but only provides that by the birth of the first son a man becomes free from debt (to *pitr̥s*). So the V. Mayūkha goes a step further and holds that there is no prohibition at all either to give or take in adoption the eldest son, while the Mit., though it does not hold the adoption bad, seems to hold that the giver incurred blame. The Sam. K. p. 150 also does not allow the adoption of the eldest son. Two or more persons cannot adopt the same boy and if they do so the adoption by each is invalid¹²⁷⁹. The Dvyāmuṣyāyaṇa adoption, to be described later on, is an exception.

The texts contain rules about preference in selecting a boy for adoption, when several are eligible. The Mit.¹²⁸⁰ on Yāj. II. 132 declares that the verse of Manu IX. 182 stating that 'when out of several brothers who are sons of the same father one has a son all of them become through that son persons having a son' does not provide that he becomes really the son of all but it indicates that when a brother's son is available

1278. Vide *Kashibai v. Tatia* 7 Bom. 221, *Tukaram v. Bahaji* 1 Bom. L. R. 141 (for valid adoption of eldest son), where at p. 152 the following passage from the Mayūkha is referred to: उपेत्येन जातमात्रेण पुत्रीभवति मानव इति उपेत्येन पुत्रकार्यकरणे सुखव्याप्तं न द्वेष इत्यप्यपि निषेधो द्वापुरेव न प्रतिग्रही-तुरित्यपि सः । स्वाद्युषं प्रतिषेधो द्वापुरेव पथेतस्य उपेत्येनानिषेधकता स्वात् । न तु सान्ति । मानाभावात् । पुत्रीभवतीत्यनेन पुत्रित्वमात्रेणैव कथापाकरणोक्तिमात्रपरत्वाच्च । अत एव पितृणामनुष्येव स तस्मात्सर्वमर्हति—इत्युक्तार्थं सङ्गच्छते । स्व. मयूख p. 108. The same passage of the Mayūkha is referred to in *Vyas Chimanlal v. Vyas Ramchandra* 24 Bom. 367 (F. B.) at p. 373.

1279. अपुत्रेणैकैकपुत्रवशाच्च न द्वार्यां त्रिभिर्वा एकः पुत्रः कृतव्य इति मय्यते । स्व. मी. p. 25.

1280. वस्तु-आवृणामेकजातानामेकधनपुत्रवशाच्च । सर्वे ते तेन पुत्रेण पुत्रिणो मयूर-जयीतु—इति (मनु १. १२९) तदपि आवृणस्य पुत्रीकरणसम्बन्धेऽप्येषा पुत्रीकरणनिषेधार्थम्, न पुनः पुत्रत्वयतिपादान्नाय तत्पुत्रा योजय्या वस्तुत्वमेव विरोधात् । मिता, on वा. II. 132. The same verse is कश्चिद् 17. 10 (with variations). स्व. नि. p. 140 quotes similar verses of *Harita* and *Bṛhaspati*. Compare *विष्णुच. सू.* 15. 42 also. 'आद्यन्तराणां पुत्रवत्पुत्रीकियमित्येतत्त इतिवद्वीरस्यार्थाः । वस्तु संशयकारेणोक्तं पथेकजाता यद्यपि आतरस्तु सर्वोद्वाराः एकस्यापि स्तुते जाते सर्वे ते पुत्रिणः स्मृताः—इति तस्य ... द्वेक-स्वामिना तात्पर्यार्थं उक्त—उभयपक्षेऽपि नाप्यः प्रतिनिधिः कार्यं इति ग्रन्थेन । स्मृतिच. II. p. 289. Vide स. वि. p. 395 for quotation of this passage of *स्मृतिच.*

for adoption another boy should not be adopted. A similar explanation had been given by an ancient commentator Deva-svāmin. The D. M., D. C. (pp. 5-6) and Sam. K. p. 150 quote passages of Śaunaka¹²⁸¹ and Śākala that a man should prefer a sapinda or a sagotra to one who is not a sapinda or of the same gotra. The D. M., D. C., the Sam. K. p. 150, the Dharmasindhu recommend the following order: the full brother's son, then a sagotra sapinda, then a sapinda though not of the same gotra (such as a boy from one's maternal uncle's line or a paternal aunt's descendant), then one not a sapinda though of the same gotra, then one who is neither a sapinda nor a sagotra. This order is purely recommendatory and an adoption in breach of it is quite valid. It has been recently held that an adoption is invalid if the boy adopted be congenitally and incurably deaf and dumb though not an idiot. Vide *Surendra v. Bholanath* I. L. R. (1944) 1 Cal. 139.

As to the age of the boy to be adopted there is great divergence among the medieval writers which is also reflected in the case law. In this connection certain verses of the Kālikāpurāṇa assume¹²⁸² great importance. The V. Mayūkha and the D. C.

1281. आङ्गणानी सपिण्डेषु कर्तव्याः पुत्रसंयताः । तदभावेऽसपिण्डो वा अल्पवृद्धः न कारयेत् ॥ शौनकः, सपिण्डापर्यन्तं चैव सगोत्रजमथापि वा । अनुवक्तो हि नो यस्मात्पुत्रत्वे परिकल्पयेत् । समानगोत्रजामात्रे पात्रेऽप्यन्यगोत्रजम् । शाकलः, both q. by दृष्ट. मी. p. 41 and 48, and दृष्ट. च. pp. 5-6. A comparatively late work called असपिण्डासगोत्रपुत्रपरिग्रहपरीक्षा (composed after about 1700 A. D., since it mentions the दृष्टकर्मोत्तरा and संस्कारकौस्तुभ) after an elaborate discussion of Rg. VII. 4. 7-8 and the above passages of Śaunaka and Śākala states the following conclusion (D. C. College Ms. No. 133 of 1886-92 folio 16 b) 'यथा ... द्वापिण्डादयः समर्थाश्च मातुलकन्यापरिणयम् ... तथा असपिण्डासगोत्रपरिग्रहोपि परित्यज्य देशे येषां कुलजनैस्त्रिदशस्तथापि मातुलकानि चैव सपिण्डाणि च ।'

1282. पितृमंजिषं च, पुत्रः संस्कृतः पृथिवीपते । आचूडानं न युक्तं न पुत्रतां पाति चारयतः ॥ चूडोपनयनसंस्कारा निजगोत्रेण न कृताः । द्वापिण्डासगोत्रपात्रे स्वरूपया दासं कल्पते । अथैव पुत्रमाह्वयं द्वापिण्डाः सुता सुप । यदीत्या पञ्चवर्षीयं पुत्रेति प्रथमं चरेत् ॥ सातिकापुराण q. by दृष्ट. मी. p. 122, नि. सि. III पूर्वांशे p. 250, स्प. मयूख p. 114, दृष्ट. च. pp. 31-33 (reads यदि स्वाकुलसंस्कारो यदि वारीतमेषाः ग्रहणे पञ्चमाह्वयं पुत्रेति), सं. की. p. 160 (reads चूडाया यदि and अन्वया अत्रास). The cūḍā was usually performed in the third year and the locks that were kept on the boy's head depended upon the number of the *pravara* ages of the gotra of the father. Vide H. of Dh. vol. II. pp. 260-265 for cūḍākaraṇa. So if a boy (who was असगोत्र) was adopted after cūḍā, his position would be this that some संस्कारा would have been performed with one gotra, while others would be performed with another gotra i. e. he would thus belong to two gotras. To prevent this and to complete his affiliation into the adoptive family the *putresā* had to be performed.

hold that the passage is of doubtful authenticity (as the verses are not found in several mss.), while the D. M. and the Nirṇaya-siṃdhū hold them to be genuine and the Saṃ. K. pp. (169-172) after referring to these views states that those verses are opposed to what is stated in the Ait. Br. about Śunahsepa who was adopted by Viśvāmitra as a son even after upanayana. The verses are: 'O King! that son, whose *samśkāras* up to (including) the *cūḍā* (tonsure) ceremony are performed with the gotra of his (natural) father, does not (i. e. cannot) attain the status of the adopted son of another. When the ceremonies of *cūḍā* and upanayana are performed under his own gotra (by the adoptive father) the *dattaka* and the other kinds become (recognised as) sons (in the adoptive family); otherwise they are called *dāsa* (slave). After the fifth year the adopted son and the rest cannot be (recognised as) sons. Having taken one who is five years old, one (the adopter) should first perform the *putreṣṭi*'. These verses state four propositions: (1) If all *samśkāras* from *jātakarma* to *cūḍā* (i. e. including it) have been performed in the family of birth that boy cannot be adopted in another family; (2) if a boy's *cūḍā* and other later ceremonies are performed in the family of adoption he is fully an adopted son; (3) a boy over five years of age cannot be adopted at all; (4) a boy whose *cūḍā* has been performed in the family of birth may be adopted up to five years, provided the rite called *putreṣṭi*¹²⁸³ is first performed in the adoptive family before any other ceremony is performed on the adopted boy. The D. M. says that the best time for adoption is up to three years, then from three years to five is the next best (*garuḥ*) and that after five no boy can be adopted. The D. C. (p. 36) holds that a boy of the three higher classes can be adopted up to upanayana and that a śūdra boy can be adopted till his marriage. The Nirṇaya-siṃdhū seems to be of the same opinion. The V. Mayukha¹²⁸⁴

1283. About the पुत्रेष्टि, the वृत्त. मी. p. 132 says 'अग्रे पुत्रेष्टे दुरोवाशमहा-कपालं निवेदिन्वाय पुत्रिणे दुरोवाशमिकावृत्तकपालं मजाकामः । अग्निं वारसै मजो मजनपति इदमिन्द्रः मयच्छतीति वाचने प्रजाकलकत्वमिष्टेः श्रूयते । तत्र चातुल्यका मजा तत्र तदुत्पत्तिरेव भाव्या यत्र तुल्यका परिहृयते तत्रोत्पत्तिरेवाभावस्तथाः प्रजात्वमेव भाव्यमिति कल्पयते प्रकृत-निवन्धपात्रपत्तेः ।' The स. कौ. p. 173 contains the words अग्रे ... मयच्छतीति. Vide आनन्द. मी. II. 10 'पुत्रकामेष्टवामग्निः पुत्री'.

1284. इतस्तु परिणीत उपपन्नपुत्राणि च भवन्तीति तात्पर्याः । पुत्रं चेद् बापका-भवात्, म्य. स. p. 114. When Nīlakaṇṭha says that the three verses of the Kālikāpurāṇa refer to the adoption of an asagotra boy, that is not his real opinion; he only concedes that that passage may, if at all, refer to the adoption of an asagotra boy, एवं च पुत्राणां इत्यतश्चतुर्लोकविज्ञानमनुकीर्तिणा द्विजादीनामुपनयनमनामः इत्यत्र तु निवाहादिनामः । दत्त. च. p. 36.

and Sam. K. both hold that even a boy not of the same gotra may be taken in adoption after upanayana or after marriage and even when the person to be adopted has himself had a son. In Bengal, Benares¹²⁸⁵ and Bihar the courts hold that the boy must be adopted before *upanayana*. The same rule holds good in Madras¹²⁸⁶; but there it is further held that if the boy to be adopted is of the same gotra as the adopter, the adoption may be made after upanayana but before marriage. In Bombay a person may be adopted at any age, even after marriage and even after he has had children and he may be even older than the adopter.¹²⁸⁷ In the whole of India, a śūdra may be adopted only before his marriage, but in the Bombay Presidency the adoption of a married man and of one having even a child is allowed also among śūdras¹²⁸⁸.

1285. *Vide Ganga Sahai v. Lekhnaj* 9 All. 253 (at p. 306 the translations of the Kālikāpurāṇa verses by Sutherland and Colebrooke are quoted and at p. 318 the authenticity of those verses is held to be extremely doubtful); *Raja Mukund v. Jagannath* 2 Patna 469, 477 (where the passage of the Kālikāpurāṇa is quoted), in which it was held that a boy may be adopted till upanayana and that it does not matter if the cūḍā ceremony is performed in the family of birth and the putresī is omitted at the time of adoption; *Chandreshwar v. Bisheshwar* 3 Patna 777 at p. 844 (where the passage as to five years was held not binding); vide *Surabato Devi v. Sudhir Kumar* AIR (1944) Cal. 265.

1286. *Viraragava v. Ramalinga* 9 Mad. 146 (F. B.) for the validity of the adoption of a sagotra after upanayana and *Pichnevayyan v. Subbavayan* 13 Mad. 128 for the invalidity of a married man's adoption.

1287. *Vide Dharma v. Ramkrishna* 10 Bom. 80, 84 (where it is said that though Nīlakaṇṭha's explanation that the Kālikāpurāṇa verses refer to an asagotra causes a difficulty, yet it does not follow that he adopts that interpretation as his own) in which the adoption of a married asagotra brāhmaṇa was upheld; *Kalgavda v. Somappa* 33 Bom. 669 where the adoption of a married man having a son was upheld, but it was decided that the son born before adoption remained for purposes of inheritance in the natural family; *Balabai v. Mahadu* 48 Bom. 387 (where the adopted man was older than the adopter).

1288. *Lingayya v. Chengalammal* 48 Mad. 407 where it was held that even a śūdra cannot be adopted after his marriage, (which decision follows the D. C.)

Saunaka required that the boy to be adopted must be *putracchāyānaha*¹²⁸⁹ (one who bears resemblance to or is a reflection of the *aurasa* son). This has led to differing explanations by the commentators and contradictory decisions in the several Indian High Courts. The D. M. and D. C. (p. 21) both explain that the resemblance consists in the possibility of being procreated by the adopter himself by *niyoga* and the like. The meaning of the D. M. is: A brother's son or a sapinda's son or a sagotra's son can be adopted because the adopter could have procreated a son by the practice of *niyoga* on the wife of a brother or a sapinda or a sagotra (according to the rules of *niyoga*); but he could not have done so as regards his mother, or grandmother, daughter or sister or his mother's sister. Therefore a man cannot adopt his own brother, paternal or maternal uncle, a daughter's son or a sister's son and the like. One strange thing is that, though *niyoga* had been forbidden for many centuries before the D. M., the author of it brings in the rules of the long obsolete practice of *niyoga*¹²⁹⁰ to find out who could or could not be adopted. But stranger things were to happen. Sutherland who translated both the D.M. and the D.C. explained in his notes the word '*niyogādīnā*' as ' by such an appointment or marriage and the like '. Vide Stoke's Hindu Law Texts p. 590 (Dattakamīmāṃsa, sec. V. *placitum* 16 note). There was no warrant for introducing the word ' marriage ' after ' *niyoga* '. The rules of *niyoga* are different from those of marriage. The judges most of whom were generally ignorant of Sanskrit and had yet to decide cases among Hindus according to Hindu Law as understood by them (vide 26 I. A. 113 at page 128 about the ignorance of Sanskrit among judges) seized upon this explanation and evolved the curious rule that no one could be adopted whose mother the adopter could not have married in her maiden state (i. e. the relationship has reference to a time prior to

1289. पुत्रस्थाया पुत्रसादृश्यं तत्र नियोगादिना स्वपुत्रत्वादनयोपपत्तं तथा आनुसंगिकसमीपादिपुत्रस्य । न चासम्बन्धिनि नियोगासम्भवा । श्रीजार्थ बाह्यणः कश्चिद्वैतनोपास्यपुत्रादिति स्मरणात् । तत्र च आनुसंगिकसम्बन्धतुल्यद्विजिह्वभाषिनेषादीनां विरासः पुत्रसादृश्याभावात् । ... तथा यदुक्ते विद्वत्सम्बन्धपुत्रो वर्जनीय इति । पत्नी रतिपोकः सम्भवति सादृश्यं कार्ष्णं इति यावत् । दत्त. मी. pp. 144-145 and p. 147. The words पुत्रस्थाया ... योपपत्तं occur in दत्त. च. also (p. 21). The half verse श्रीजार्थ ... सम्बन्धात् is almost like आदिपरं 105. 3.

1290. For the rules of *niyoga* vide H. of Dh. vol. II. pp. 392-601.

marriage). This is still the law in all Presidencies¹²⁹¹ except Bombay. Although the D. M. stated that the boy to be adopted must be capable of being procreated by niyoga, at another place it remarks, after quoting verses of Śaunaka¹²⁹² and Śākala, that a boy of another gotra may be adopted except a daughter's son, a sister's son and a mother's sister's son. The Bombay High Court holds that any one may be adopted except these three (vide *Ramchandra v. Gopal* 32 Bom. 619, *Walbai v. Heerbai* 34 Bom. 491 holding that a man cannot adopt his mother's sister's son, *Ramkrishna v. Chinnaji* 15 Bom. L. R. 824 holding the adoption of father's sister's son valid). Very strange results have followed from this viz. the Bombay High Court has upheld the validity of the adoption as a son by a man of his own half-brother (vide *Gujanan v. Kashinath* 39 Bom. 410), of his own maternal uncle's son, and the adoption by a widow of her deceased husband's son-in-law (vide *Sitaku v. Parvatibai* 47 Bom. 35). It should be noted that the Dvaitanirṇaya or Dharmadvaitanirṇaya¹²⁹³ (of Śaṅkarabhaṭṭa, father of Nīlakaṇṭha) and the V. Mayūkhā both hold after a very abstruse reasoning based on several Mīmāṃsā rules, that men of the three higher classes may

1291. Vide *Minakshi v. Ramanada* 11 Mad. 49 (F. B.), *Bhagwan Singh v. Bhagwan Singh* L. R. 26 I. A. 153, 160, in the latter of which the texts of Śaunaka and Śākala are relied upon.

1292. तथा च शौनकः । ... दौहित्रो भगिनेयश्च शूद्रश्च कियते सुतः । ब्राह्मणादि-
त्रये नस्ति भगिनेयः सुतः कश्चित् । ... तदेतत्पदमाचष्टे शाकलः । समानगोत्रजानामे पात-
येद्वन्मोक्षजम् । दौहित्रं भगिनेये च मातृस्वसृसुतं विना । इति । एतेन भगिनेयपदं दौहित्र-
मातृस्वसृपयोदपलक्षणमिति स्पष्टमेव सिद्धम् । पुनर् चतत्, विवदसम्बन्धस्य विषयि
समानत्वात् । दत्त. मी. pp. 80 and 101; दत्त. च. p. 8; दत्त. च. p. 6 quotes शाकल's
verse. The दत्त. मी. elsewhere (p. 98) and the सं. की. p. 158 read शूद्राणां
विहितः सुतः and the सं. की. p. 176 reads 'दौहित्रं भगिनेये वा शूद्राणां चापि वापयेत्,'
while the धर्मद्वैतनिर्णय (p. 103) and the च. मयूख p. 110 read दौहित्रो भगिनेयश्च
शूद्रस्यापि च कीयते. दृढगीतम् q. by the दत्त. मी. p. 146 reads 'ब्राह्मणादित्रये नस्ति
भगिनेयः सुतः कश्चित् ।'

1293. Vide the text of the V. Mayūkhā p. 111 and notes pp. 173-179
in my edition of the V. Mayūkhā for explanation. The Dvaitanirṇaya
(p. 103) concludes: तेन ब्राह्मणादिभिर्पि दौहित्रभगिनेयौ पुत्रत्वेन ग्राह्याविति सिद्धम् ।
तथा शूद्रेण सति सम्भवे दौहित्रभगिनेयत्वे ग्राह्यौ । The V. Mayūkhā p. 111 follows
the Dvaitanirṇaya and states that usage is in accordance with its explana-
tion: 'निवृत्तं चैतद् द्वैतनिर्णये नालम्ब्यते: सिद्धाचारोपपेक्ष ।' In *Gopal v. Hanmant*
3 Bom. 273 at p. 280 it was held that Nīlakaṇṭha also interdicted the
adoption of the daughter's son and of the other two by the regenerate
classes. It is submitted that this view as to the position of the V.
Mayūkhā on this point is entirely wrong.

adopt a daughter's son, a sister's son or a mother's sister's son and that a śūdra must adopt one of these if available in preference to any one else. The Bombay High Court follows the interpretation of Śaunaka's verse given by Nandapandita in preference to Nilakantha's, but in its turn disregards the authority of Nandapandita who forbade the adoption of a brother or uncle. It would have been far better if it had generally brushed aside everywhere the dicta of Nandapandita and preferred the interpretation of the Mayūkhā. Popular sentiment is in favour of the daughter's son or sister's son being adopted, as they are the nearest and often the dearest relations, and yet the High Court shuts the door against them, while it opens it ajar for the adoption of a brother or maternal uncle or his son or one's own daughter's husband, which appears absurd to people. Besides the High Courts have recognised the adoption even of a daughter's son¹²⁹⁴ on the ground of custom by Desastha smārta brāhmanas in the Dharwar District (vide *Sundraba v. Hanmant* 56 Bom. 298), by Telugu brāhmanas (*Viswasundara v. Somasundara* 43 Mad. 376). Śūdras can adopt a daughter's or sister's or mother's sister's son all over India. The D. M. went so far as to say that a widow could not adopt her brother's son.¹²⁹⁵ The D. M. ignored the fact that the widow adopts to her husband (and not to herself) who bore no relation to his wife's brother's wife and who could have himself adopted that son. The Bombay High Court and the Privy Council have discarded this absurd proposition of the D. M. Pannalal in 'Kumaun Local customs'

1294. It may be noted that the question of the adoption of the daughter's son cropped up even in the times of the Peshwas. In 'Selections from Peshwa's Records' vol. 43 No. 146 pp. 116-117 the opinion of Rāmsūtri, the Chief Justice of the Peshwa's court, is sought on the adoption of a daughter's son from the Raingiri District. The Prthivirāja Rāman states that the famous Chohan hero Prthivirāja had been adopted by his maternal grand-father Anahapāla of the Tomara dynasty of Delhi. But modern historians say that this is imaginary (vide 'History of Medieval India' by Prof. Ishwari Prasad p. 9 n.).

1295. उदय इन्द्रगीतमः । माङ्गलादिष्वेव नास्ति भागिनैः पुनः कञ्चित् । इति । भागिनैश्चर्तुं मातुलुङ्गवाच्यप्रकरणम् । तेन भगिन्या मातुलुङ्गो न प्राप्यः । इति. मी. pp. 36-37. Vide *Bai Nani v. Chunilal* 22 Bom. 973, *Puttulal v. Parbati* 42 I. A. p. 155, where after admitting that the Dattakamimāmsā is embedded in law, the P. C. say that caution is required in accepting the glosses of Nanda Pandita where they deviate from or add to the smṛtis (p. 161).

notes that in that part of India a daughter's or a sister's son may be adopted (p. 14 para 56). It has been recently held that the adoption of the illegitimate son of a woman even among sūdras is invalid. Vide *Appa v. Ramakrishna* I L. R. (1941) Bom. 350. This was relied upon for holding that a woman cannot give in adoption an illegitimate son among Lingayats in *Tirukangeada v. Shivappa* A. I. R. (1944) Bom. 40.

It is now necessary to say a few words about the *dvyaṁusyāyana*. A *dattaka* is of two kinds¹²⁹⁶, *kevala* (simple or ordinary) and *dvyaṁusyāyana* (the son of two fathers). When a man gives his only son in adoption to another under an agreement that he is to be considered as the son of both the natural father (*janaka* or *janaka-pitr*) and of the adoptive father (*pālaka*), the son so given is called *dvyaṁusyāyana*. The Bombay High Court has held that in order to constitute a *dvyaṁusyāyana* an express agreement as stated above must be proved even when one brother adopts the only son of another¹²⁹⁷. A *dvyaṁusyāyana* inherits both in the natural and adoptive families. The word *dvyaṁusyāyana* was employed in some of

1296. अथ च दत्तको द्विविधः केवलो द्वायामुस्यायणश्च । संविद्धं निमा दत्त अयः । आवधोरसाविति संविद्धः दत्तसम्बन्धः । स्व. मयूख p. 119. The दत्त. च. (pp. 61, 66) employs the word द्वायामुस्यायण for केवलदत्तक. Vide *Laxmipatirao v. Venkatesh* 41 Bom. 315, *Huchrao v. Bhimarao* 42 Bom. 277. It has already been seen (p. 639) that the Mit. employs the words *dvyaṁusyāyana* and *kṣetrāja* as synonyms. Nār. (dāyabhāga 23) appears to use it in the same sense, 'द्विदामुस्यायणा दत्तुर्द्वयोः पित्रोर्वके दृढकः । रिश्वार्थे सप्तद्वयुर्धीनिर्धेयिकरोत्सवा ३. In this verse Nār. does not employ the form *dvyaṁusyāyana*, but the word *āmusyāyana* with the adverb 'dvily' meaning 'twice'. The word *dvyaṁusyāyana* is made up of 'dvi' (two) and 'āmusyāyana' (issue of this man, issue of so and so). The word *āmusyāyana* occurs in the Tai. Br. II. 7. 7. 7 (अथ च इमे रसलमहमसा आमुस्यायणा ओजसा वीर्याय दृष्टानि) and in the Atharvaveda IV. 16. 9, X. 5. 36 and 44, XVI. 7. 8 in the form 'āmusyāyana āmusyāḥ putra'. In the Hir. gr. I. 9. 19 we have इदमहमामुस्यायणस्य पाप्मानममुस्यायणे, where Mātradata explains: अमुस्यायं आमुस्यायण इति. Similar words occur in the Bhāradvāja gr. II. 19. Kātyāyana has vārtika 2 'आमुस्यायणामुस्यायणिकेतुपसंस्मरणम्' on Pān. VI. 3. 21. 'āmusyāyana' is formed from 'amuyā' (of this or that man) in the sense of 'apatya' acc. to Pāṇini IV. 1. 99 (nadādibhyah phat). In the Xēv. Sr. S. (Uttaraśaṅka 6. 13) the word 'dvipravācana' is employed for *dvyaṁusyāyana*, 'अथ च एते द्विपवाचना यथैतच्छ्रौतुर्गोत्रियः' on which Nārāyaṇa explains, च एते द्विपवाचना कश्चिद्वपुषपदेयः एते श्रीगोत्रेतिरा इत्यामुस्यायणाः श्रीगोत्रपदे केन श्रीगोत्रेयः गोत्रवाचनं वशात्.

1297. Vide *Laxmipatirao v. Venkatesh* 41 Bom. 315 and *Huchrao v. Bhimarao* 42 Bom. 277.

the smṛtis as applicable to all such sons as the dattaka, kṛita¹²⁹⁸. The V. Mayūkha quotes a prose passage from Kātyāyana (which is attributed to Pāṭhinaśi in D. C.) and the V. Mayūkha, D. M. and D. C. all quote a verse (which is ascribed to Pravarādhyāya by the first and to Pārijāta by the D. M.) that supports this. The D. M. and D. C. both quote two sūtras of Satyāsādhā and Śabara's gloss (*bhāṣya*) thereon in which the *kṣetraja* is called *nitya dvyāmusyāyana* and the dattaka and others are called *anitya dvyāmusyāyana*. Yāj. II. 127 and Baud. Dh. S. II. 2, 21 provide that a *kṣetraja* is the son of both the begetter and of the husband of the wife on whom the son is procreated. Therefore such a son is called *nitya dvyāmusyāyana* (because he is always the son of two fathers). When the *kṣetraja* became obsolete and forbidden, the only *dvyāmusyāyana* was an only son taken in adoption with a stipulation as described above. About the dattaka Manu IX. 142 states the general rule that the dattaka loses the gotra of his genitive father and assumes that of the adopter. But a dattaka belonged to two gotras according to some, if his *samśkāras* up to *caula* were performed in his natural family and the *samśkāra* of upanayana and those that follow were performed in the adoptive family. Therefore it was not a general proposition that a dattaka always belonged to two gotras. If all the *samśkāras* from *jātakarma* were performed by the adopter, then the dattaka would take the gotra of the adopter alone. Hence the sons called dattaka and 'the bought' were styled *anitya dvyāmusyāyanas* (who were not in all cases *dvyāmusyāyanas*). The D. M. states this¹²⁹⁹ twofold division of *dvyāmusyāyanas* and employs the words *nityavat* or *nitya* and *anityavat* or *anitya*

1298. यन्-अथ वेदककालवृत्तिकामुखाः परपरिवर्तमानावेवास्ते द्व्यामुखापणा भवन्ति—इति द्व्यामुखापणामुपक्रम्य कारवाचनम् । स्व. मयूख p. 115; वृत्त. च. p. 46 ascribes this to पैठीनासी and reads; अथ दत्तककालवृत्तिकामुखाः ... अवेवावेवा येऽत्र जातास्तेऽसङ्गतकुलोना द्व्यामुखापणा भवन्तीति । द्व्यामुखापणना ये स्फुटसकलितकाद्याः । मोक्षवेत्तपुत्राणां शौद्रकशिरपोर्यथा । q. from अथारण्याय by स्व. मयूख p. 118.

1299. द्विभिधा दत्तकादयो निरवयव द्व्यामुखापणा अनिरवयव द्व्यामुखापणाश्च । तत्र निरवयव द्व्यामुखापणा नाम वे जनकवृत्तिकालवृत्त्यामात्रपरिवर्तन इति संमतपञ्चाद । अनिरवयवद्व्यामुखापणास्तु वे च्छात्राः संस्कारार्जनकाले संस्कारा उपनयनादिभिश्च यतिगृहीता । तेषां मोक्षद्वयेनापि संस्कृतत्वाद् द्व्यामुखापण्यत्वं परं लानित्यम् । जातमात्ररूपेण परिग्रहे मोक्षद्वयेन साकाराभावात् तस्य प्रतिगृहीतुमात्रमेव । तद्विदुः सर्वमभिवेदात् सत्त्वात् । 'निरवानो द्व्यामुखापण्यतो द्वयोः' इति सूत्रेण निरवयवद्व्यामुखापणानां मोक्षद्वये परस्परसम्बन्धमुक्त्या तन्नेपाभिवेदनमपदिक्षति 'तत्तकादीनां तु द्व्यामुखापणवत्' इति सूत्रेण । वृत्त. मी. pp. 188-89; vid= वृत्त. च. p. 44 for the सूत्र of सत्त्वात्.

to denote the two varieties and restricts the former only to a son adopted with a stipulation as stated above. The *kṣetraja* became quite obsolete many centuries ago and the courts have held that the *anītya dvyāmusyāyana* is also now obsolete.¹³⁰⁰ It is now held that every adoption is presumed to be in the simple (*krēala*) form, unless a stipulation that the boy will be the son of both is proved (when it will be a *dvyāmusyāyana* adoption).

When a man is adopted in the *dvyāmusyāyana* form, his son born after such adoption has been held to inherit as grandson to the adoptive father, if the *dvyāmusyāyana* son died before the adoptive father.^{1300a}

Ceremonies of Adoption.—The most essential ingredient in adoption is the giving of the boy by the natural father and the taking of the boy by the adopter with the intention to transfer the boy to the family of the adopter. Another requisite (in some cases) is the *homa* called *dattahoma*¹³⁰¹ which as described by Śaunaka and Baud. is given¹³⁰² in the Appendix. It is not necessary that the *dattahoma* must be performed immediately after the giving and taking, but it may be performed later and its performance may be delegated to others when the giver or taker is a widow or a *sūdra* or is ill &c. Although in Vedic times women composed hymns and although Hārta and Yama stated that women had the *upanayana* performed on them and could study the *Veda* (H. Dh. vol. II pp. 293-295), in later times it was held that women could not study the *Veda*, could not repeat Vedic mantras and therefore could not perform any *homa* (including *dattahoma*). Therefore some writers said that a widow could not adopt at all, while others like the V. Mayūkha said that women are to be assimilated to *sūdras* and so just as a *sūdra* can get the *dattahoma* performed through a *brāhmaṇa*, so a widow, though she cannot herself engage in *homa*, may employ a *brāhmaṇa* to perform the *dattahoma*. Vide H. Dh. vol. II pp. 365-368 (for deterioration in the

1300. Vide *Basappa v. Gurlingawa* 57 Bom. 74, 77, where the two kinds of *dvyāmusyāyana* are mentioned and it is stated that the *anītya dvyāmusyāyana* is now obsolete.

1300 a. Vide *Ganpatrao v. Balakrishna* I. L. R. (1943) Bom. 349.

1301. तस्माद् दत्तकः द्विषु संस्कारानिमित्तमेव पुत्रत्वमिति सिद्ध्यति । दत्तकनिग्रहहोमाद्य-
व्यतमानाव तु पुत्रत्वाभावे एवेति । दृष्ट. मी. p. 161.

1302. Vide Appendix.

position of women), and note 1262 above and V. Mayūkha quoted below. ¹²⁶¹ It has been held that the *dattahoma* is not ¹²⁶² necessary among twice-born classes if the boy to be adopted belongs to the same gotra as that of the adoptive father. Jolly (in T. L. L. p. 169) states that the *Dattakadarpaṇa* refers to a text of Yama from the *Sarasvatīvilāsa* to the effect that *homa* is not absolutely essential in all cases. From Colebrooke's *Digest* V. 4 CCLXXIII it appears that Jagannātha held the same view. The *Dharmasindhu* remarks that in certain countries an adoption of a sagotra sapinda boy can be validly effected with the mere assent of the giver and adopter without Vedic ceremonies. There is a good deal of conflict in the case law on this point, which is passed over. Among *sūtras* no *homa* is necessary. The ceremony of adoption as described by Baud. gr. *śeṣasūtra* II 6. 4-9 (which is probably the oldest on record and which was the one to be followed by the *Taittirīyas* or followers of the Black *Yajurveda*, according to D. M., Sam. K. p. 177 and the *Dharmasindhu* p. 161) is as follows: When about to take (in adoption) the adopter makes ready (or collects) the following viz. two pieces of cloth, two ear-rings, a finger ring, an *ācārya* (officiating priest) who is well versed in the *Veda*, a bundle of *kuśa* grass, fuel sticks of *pālāsa* (*Butea Frondosa*). Then in the midst of invited relatives, after informing the ruler, he serves food to *brāhmanas* in the assembly hall or in the middle of the house. He (the adopter) makes (the *brāhmanas*) pronounce the benedictions 'May the day be auspicious! May you fare well! May there be prosperity!' and performs the acts (usual in all *homas*) from drawing lines on the altar up to carrying forward the *Pranīta* water. Vide H. of Dh. vol. II pp. 209-212 for the procedure common to all *homas*. Then he goes into the

presence of the giver and begs of him 'give me your son'. The other one (the giver) says 'I give'. He (adopter) then takes hold of the boy with the words 'I accept thee for the continuity (of my family)'. Then he decks (the boy) with the pieces of cloth, the ear-rings, the finger ring and performs the acts from laying fuel sticks round the altar up to the offering of oblations into fire; he offers boiled rice into fire with the mantra 'yastvā hrda' (Rg. V. 4. 10 or Tai. S. I. 4. 46. 1) as a *paronuvākya*¹³⁰⁵ (prayer of invitation) and with the mantra 'yasmāi tvam sukṛte' (Rg. V. 4. 11, Tai. S. I. 4. 46. 1) as a *yājyā* (prayer of worship or offering). Then having offered oblations of clarified butter with the *vyāhrtis*¹³⁰⁶ he performs the acts from the offering to Agni Svistakṛt down to the giving of the cow and presents. He (the adopter) gives as *dakṣiṇā* (fee) to the priest these very pieces of cloth and rings (with which the boy was decked).

The procedure laid down by Śaunaka, who appears to be much later than Baud., is somewhat different (though there is a good deal common to both) and is meant for the students of the Rgveda (acc. to Sarṇ. K. p. 175). A few salient points may be noted. The adopter should fast the previous day, he should offer *madhugarka* to the officiating priest, should perform all the details from the placing of fuel sticks on the fire up to the purification of clarified butter with the blades of *kṣa* grass. The giver recites (when begged) the five verses beginning with 'ye yajñena' (Rg. X. 63. 1-5) and the adopter holds the boy with both hands while repeating the mantra 'devasya tvā' (Āśv. gr. I. 20. 4), mutters the ṛk 'āṅgād-āṅgād' (quoted above on p. 641 n. 1202) and smells the boy on his head. The adopter offers boiled rice with Rg. V. 4. 10, X. 85. 38, X. 85. 41-46. A much more elaborate procedure is set out in the V. Mayūkha (pp. 120-122 text) and the Dharmasindhu (III pūrvārtha pp. 160-161).

The results of adoption—Adoption has the effect of transferring the adopted person from his natural family into the adoptive family. Adoption confers upon the adopted person the same rights and privileges in the family of adoption as the son

1305. For the meaning of *Paronuvākya* and *Yājyā*, vide H. of Dh. vol. II. p. 1060 n. 2372 and pp. 1058-59 respectively. For the offering to Agni Svistakṛt vide H. of Dh. vol. II. p. 208 and appendix p. 1237 n. 481.

1306. The *vyāhrtis* are the mystic syllables *bhūḥ*, *bhuvah* and *svah*. The offerings will be accompanied with these syllables as follows: 'om bhūḥ svāhā', 'om bhuvah svāhā', 'om svah svāhā', 'om bhūḥ bhuvah svah svāhā'.

of the body (*aurasa*) except in a few well defined cases. The basic text on this point is that of Manu¹³⁰⁷ IX. 142 which may be literally rendered as follows: 'The son given should not take the *gotra* (the family name) and the wealth of his natural father; the *pinda* (the cake of boiled rice offered to deceased ancestors in *śrāddhas*) follows the *gotra* and the wealth (i. e. is invariably concomitant with them); of him who gives (his son in adoption) the *śrādhā* (obsequial rites) ceases (so far as that son is concerned)'. The preceding verse (Manu IX. 141) states that the adopted son takes the wealth of his adoptive father and all that this verse says is that, after adoption, the son given in adoption does not take the name of his natural father and has no right in the wealth that then is the natural father's and that he does not perform the obsequial and *śrāddha* rites for his natural father. But from this verse a learned Hindu Judge derived the sweeping proposition that 'the theory of adoption depends upon the principle of a complete severance of the child adopted from the family in which he is born, both in respect to the paternal and maternal line, and his complete substitution into the adopter's family as if he were born in it'. There is no warrant for the idea of complete severance emphasized here. This dictum was followed in many cases and was accepted by the Privy Council¹³⁰⁸. Another great Judge went so far as to

1307. गोत्ररिक्ते जनयितुं हरेद् दत्तम् कचित् । गोत्ररिक्तायाम् पित्रो ययैति
द्वयः स्वयम् ॥ मनु IX. 142. The Mit. on Yāj. II. 132 and V. Mayūkha p. 113
read 'न भजेद् दत्तम् सुतः'. But this reading makes no change whatever in the
meaning, since in ancient sūtras and smṛitis, the roots '*bhaj*' and '*hr*' and
derivatives from them are used promiscuously in the same sense with regard
to *gotra* and *rikṣa*. Vide the words *gotra-bhājah* and *rikṣa-bhājah* cited
above (on p. 650) from Band. Dh. S. II. 2. 36-37 and Gaut. 28. 30-31, the
words '*rikṣam bhājanam*' (in Gaut. 28. 19) and '*rikṣabhāḥ*' (in Gaut.
28. 26), Vas. 17. 84 (taylorābhe rājā haret), Yāj. II. 132 (पित्रो ययैति) and
II. 138 (दद्यादपहरेत्तां), निष्कर्मसूत्र 15. 40 (पञ्चायहः न पित्रदायी). Even
'*apaharet*' which ordinarily means 'should steal or take away' is used by
Yāj. II. 138 only in the sense of 'should take or claim'. Manu (IX. 133
and 154) employs the words '*haret*' and '*śādyāt*' in the same sense.
Vide also *रिक्तायाम्* (in Manu IX. 153) and *भजेद्* (in IX. 192). Therefore
the learned Judges in *Dattatraya v. Govind* 40 Bom. 429 and in *Bai
Kesarba v. Shivasangji* 34 Bom. L. R. 1332 (at pp. 1340-41) unnecessarily
enter into a long discussion on '*haret*' and '*bhājet*' and the several trans-
lations of these words by Golapchandra Sarkar and others.

1308. Vide *Uma Shunker Motra v. Kali Komul* 6 Cal. 256 (F. B.)
at p. 260. Vide *Kali Komul v. Uma Shunker* L. R. 10 I. A. 138, 149 for
the acceptance by the P. C.

say that 'an absolute adoption appears to operate as birth of the boy in the family of adoption and as civil death in the family of birth, having regard to the legal consequences that are incidents of such adoption'¹³⁰⁹. But then the P. C. felt that matters were being carried too far and administered the warning¹³¹⁰ that "As has been more than once observed the expressions 'civilly dead or as if he had never been born in the family' are not for all purposes correct or logically applicable but they are complimentary to the term 'new birth'." We have to see what construction was put upon the verse of Manu by authoritative digests. The V. Mayūkha explains Manu IX. 142 and arrives at the conclusion that the four words *gotra*, *rikṭha*, *piṇḍa* and *svadhā* are not to be taken literally but they are only used to indicate all those consequences only in relation to the natural father and the like that are brought about by their connection with the *piṇḍa* and the verse of Manu conveys the cessation of all those consequences only. It further adds that the son on being given away in adoption ceases to have similar relationship to his brother, paternal uncle (in the family of birth). It should be noted that the V. Mayūkha does *not* say that the son given away is dead to the family of birth or ceases to have any connection whatever with the members of the family of birth, but restricts the cessation of relation to the offering of *piṇḍa* and the taking of the estate after he is adopted. The D. M. quotes¹³¹¹ the Sm. C. (II. 289) and holds that by the gift the adopted son ceases to have the same *gotra* as the giver. The D. C. (pp. 23-24) states¹³¹² the same proposition, without naming the Sm. C. The learned Judges who had to decide cases of adoption, even if they knew Sanskrit, do not generally appear to have consulted authoritative works other than the few that had been translated and were quite unaware as

1309. Per Sir Asutosh Mukerji J. in *Birbhadra v. Kalpataru* 1 C. L. J. 388 at p. 400 (where Manu IX. 142 is cited in the original for this).

1310. Vide *Raghuraj Chandra v. Subhadra* L. R. 55 I. A. 139, 148 followed in *Martand v. Narayan* I. L. R. 1932 Bom. 586 (F. B.).

1311. एतेन पुत्रत्वापादकक्रियैश्च दक्षिणस्य प्रतिग्रहीतृपुत्रे स्वतः तत्समीपत्वं च भवति । द्वातृपुत्रे तु दानादेव पुत्रत्वनिवृत्तिद्वारा दक्षिणस्य स्वत्वनिवृत्तिर्दानगोत्रनिवृत्तिश्च भवतीत्युच्यते इति चन्द्रिकाकारः । दृष्ट. मी. pp. 163-164. The words पुत्रत्वापाद ... निवृत्तिश्च भवति occur in the स्मृतिच. II, p. 289.

1312. तथा मनुः । गोत्रविक्रमे ... स्वधा । इति । एतेन द्वातृपुत्रे दानादेव पुत्रत्वनिवृत्ति-द्वारा दक्षिणस्य स्वत्वनिवृत्तिर्दानगोत्रनिवृत्तिश्च भवतीत्युच्यते । तथा च गोत्रादिनिवृत्तेरेव दूर्जनात् संस्कार्यवस्तुनाम् विनोति स्मरणात् द्वातृपुत्राभ्युपगमात् एव दत्तकस्य संस्काराः प्रतिग्रहीता कार्या न पुनर्जन्मकोन द्वातृपुत्रा अपि निर्वर्तनीयाः । दृष्ट. च. pp. 23-24.

to whether even the cessation of the pinda and gotra and of the right to wealth when a son was given away was so universally accepted by the leading Dharmasāstra works as they thought. The *Sarasvatīvilāsa* (p. 394) quotes a text of Viṣṇu¹²¹³ that even the adopted son should perform the obsequial rites of the natural father and explains that Manu IX. 142 applies when the natural father has no issue at the time of his death. Rudraskanda on Khādīra gr. III. 5. 16 says the same. Kamalākara, the author of the *Nirṇayasindhu*¹²¹⁴ and a first cousin and contemporary of Nilakantha expressly states that Manu IX. 142 only applies when the natural father has a son or sons (other than the one given away) and quotes *Kātyāyana* and *Laugākṣi* cited in the *Pravaramañjarī* (p. 146) in support. The *Dharmasindhu*¹²¹⁵ also says that when a boy of another gotra is adopted after his upanayana is performed in the family of birth or when only the upanayana is performed by the adoptive father, the adopted boy should repeat both gotras at the time of bowing at the feet of elders or in śrāddha and other rites; but when all the ceremonies including the cūḍa are performed by the adoptive father then the adopted boy has only one gotra (viz. that of the adopter).

The plain meaning of the verse of Manu (IX. 142) is that when a man gives away his son in adoption, then that son is transferred into another family, does not perform the śrāddha and similar rites for the giver and cannot claim to take the wealth of his natural father as a son on the father's death or demand a partition from his father. The other son or sons

1213. सन्ततं—गोत्ररिक्ते ... स्वधा—इति सन्ततं च ग्राह्यं दक्षिणस्य स्वजनस्य गोत्रसा-
विन्दवर्गो निवृत्तौ कथं दक्षिणोपि स्वजनवित्तुः स्वधा कुर्यादिति विस्तृतवचनमिति चेदुच्यते । तदु
दक्षिणजनकस्य सन्तापभावे वेदितव्यम् । न. सि. p. 394 ; तथा दत्तपुत्रोपि जनोपेतुः पुत्रा-
न्तराभावे । एवमप्योपि यो हृयेत दुःखः । दत्तकस्य on छादिरसुख III. 5. 16.

1314. दत्तकस्य जनकस्य पुत्राद्यभावे दद्यात्तत्तत्त्वे गोत्ररिक्ते... स्वधेति मयूकः ।
इदं जनकस्य पुत्रसत्त्वविषयम् । एतस्य पवरमजयी कालापमलौघादिभ्यां स्पष्टमुक्तम् ।
अथ वे दत्तकीत ... इत्यादिप्राधान्या भवति ... मन्मत्ताद्यादिना हृयेतः पित्रोः पवरानुत्पत्तौ
'अथ यद्येतां स्वाद्यु भाग्यवशात् न स्याद्विषये हरेत्तुः पित्र्यं चैवमस्तिपुत्रस्य दद्यात्पुत्रमर्थं
स्वाद्युनाम्नामेव दद्यात्कस्मिन् आत्मे पुत्रस्यद्विरप द्यावृकीर्तयेत्परिदृष्टितारं सोत्याद्वितारं चा
दुर्तीयाद्युत्पत्तौति । नि. सि. III उक्तार्थं p. 389. The passage quoted occurs on
p. 146 of the *प्रवरमजरी*. This passage is quoted in the *स्य म.* p. 115 also.
Vide note 1295 above for a portion of it. The *चि. ता.* folio 127 says 'गोत्ररिक्ते...
स्वधा इदं जनकस्य पुत्रस्येव तदुत्पत्तौ जनकस्यापि रिक्तेष्वपि आद्यवृत्त्यै । तदुक्तं काशीपट्टोपा-
निषत्ते । अथ वे ... भवति.'

1315. परमोपपन्नपुत्रवत्स्योपसप्तमावे पातकमोक्षेण कृते उपनयनोत्तरं पतिव्रते वा
पुत्रयोगाभिप्रायान्मन्त्राद्विकर्मसु गोत्रहोकारः कार्यः । पुत्रादिसंस्कारे पातकेन कृते पात-
केषामेवैव । धर्मसिन्धु III पुरोधं p. 161.

of the giver are to perform the *śrāddhas* for the father and to succeed to the family wealth. But this verse has been twisted by some High Court decisions to yield another rule. Suppose A, a Hindu, has an only son B. On A's death B takes the whole ancestral property as the only surviving co-parcener and then B is given in adoption by his mother to X. Suppose B has a daughter C born to him before his adoption to X. Does B forfeit the estate taken by him as the last surviving male with the result that on B's adoption to X his daughter C takes the estate (which had already vested absolutely in B) as if he was dead in the family of A. The Bombay High Court has held in two decisions that on B's¹³¹⁶ adoption to X in the above illustration he loses or forfeits the property he took as the last surviving co-parcener in the family of A and his daughter C would take the estate of B as if he were then dead (though he is actually living). The result of these decisions is that the verse of Manu is construed as laying down that though a man may have been absolutely entitled to certain property as a member of one family, on his adoption into another family he loses that estate which then passes on to his heir as if he had died on the day of adoption. This construction of the verse of Manu has not been accepted by the Madras and Calcutta High Courts,¹³¹⁷ which hold that an adoption does not divest any property which has vested in a man previous to his adoption into another family. It may be noted that the Bombay High Court itself gave a decision¹³¹⁸ which is inconsistent in principle with the two decisions

1316. *Vide Dattatraya v. Govind* 40 Bom. 429 (where Manu IX. 142 is relied on for this proposition at pp. 433-434) and *Manikbai v. Gokuldas* 49 Bom. 520.

1317. *Vide Venkata Narasimha v. Rangayya* 29 Mad. 437; *Behari Lal v. Kailas Chander* 1 C. W. N. 121; *Shyama Charan v. Srisharan* 56 Cal. 1135.

1318. *Vide Mahableshwar v. Subramanya* 47 Bom. 542. In *Manikbai v. Gokuldas* 49 Bom. 520 (at p. 525) both the cases viz. 40 Bom. 429 and 47 Bom. 542 are apparently quoted with approval, but it is extremely difficult to reconcile the last two cases. If on adoption a separated coparcener is not divested of the estate already taken by him at a partition because the share taken by him cannot be said to be the estate of his natural father within the meaning of Manu IX. 142, the estate taken by a sole surviving co-parcener also cannot be divested by his subsequent adoption, because at the adoption it had ceased to be the estate of his natural father long before the adoption, because when a co-parcener dies his rights lapse to the other co-parceners and because the root cause of being entitled to partition and taking as surviving coparcener is the same viz. the birth right of a son under the *Mitākṣarā*.

cited above, when it held that where a father and his four sons partitioned ancestral family property and one of the sons was subsequently given in adoption into another family, the son so adopted was not divested by the subsequent adoption of the property already taken by the son on partition. In a still later case the Bombay High Court approves of its first decision in 40 Bom. 429 and observes: ¹³¹⁹ 'the verse of Manu refers not only to the *riktha* of the natural father but also to the gotra of the natural father. It is quite clear that the gotra of the natural father is vested in the son by his birth. The gotra so vested in the son ceases after the son is given in adoption. It is difficult to understand why the *riktha* which is spoken of in the same manner as gotra in the verse should not cease by the entire cessation of connection with the natural family. The gotra and *riktha* are inextricably joined together in a dvandva compound and it would follow logically as well as grammatically that the adopted son must lose both together and cannot lose the former and keep the latter.' In this passage the premise that there is entire cessation of connection with the natural family is entirely wrong as has already been shown and will be shown a little later on. The adoptee's connection with the gotra of the natural family does not cease for all purposes at all. Therefore the reasoning of the passage quoted above is entirely misconceived and is further opposed to two well known rules of the *Mīmāṃsā* evolved for the construction of texts. On the interpretation given to Manu IX. 142 by the Bombay decisions that verse lays down two rules (*vidhis*), viz. (1) a person adopted into another family will not take the wealth of his natural father or any one in that family *after* adoption; (2) that a person adopted into another family loses or forfeits on adoption wealth that he may have already taken absolutely in the natural family as a member of that family *before* adoption. These are two entirely different propositions and the rule of *mīmāṃsā* is that one and the same sentence ¹³²⁰ should not be construed as laying down two rules (*vidhis*) applicable to different sets of circumstances. To so construe a text is to be guilty

1319. Vide *Bai Kesarba v. Shirsangji* 34 Bom. L. R. 1332 which accepts 'na haret' as meaning 'shall not take', and quotes on pp. 1341-42 the D. M., D. C. and V. Maynka on this verse. The P. C. decision in *Raghu Raj Chandra v. Subhadra* L. R. 55 L. A. 139 does not approve of 40 Bom. 429 as regards the exact point of decision viz. the forfeiture of property already vested before adoption.

1320. अनेकविधितो हि वाक्यभेद उक्तः । तन्मन्वसिद्धिः p. 551 ad loc. II. 2. 26.

of the fault of *vākya-bheda* (splitting up of a sentence so as to yield two distinct rules). The V. Mayūkhā construed Manu IX 142 so as to indicate only one sense and avoid the fault of *vākya-bheda* on the analogy of two examples discussed in the Pūrvamīmāṃsā¹³²¹ works, but if the reasoning of the Bombay High Court were followed the same fault to avoid which Nīlakaṇṭha strives hard would be committed. There is another mīmāṃsā rule¹³²² which will be violated by the Bombay High Court's interpretation of Manu IX. 142 viz. when an already existing thing or entity and something to be accomplished or brought about in future are spoken of together in a sentence the thing already existing or accomplished is mentioned simply for the sake of the thing to be accomplished. The accomplished fact is adoption itself. Manu who mentions adoption or the adopted son which is an accomplished entity also mentions along with it the taking of property (*rikthaharāṇa*); hence that taking must have reference to the future bringing about and not the undoing of *rikthaharāṇa* which had already taken place long before.

That the gotra of the natural family persists in some matters even after a person is adopted is made clear by the digests. The Sam.¹³²³ K. (p. 183) says that every dattaka must, when entering on marriage, avoid the gotra of his natural as also of his adoptive father. The Dharmasindhu (III. p. 161) says the same and states that the prohibition against marriage

1321. यथा जातपुत्रः कृष्णकेशोऽग्नीनादधीत—इत्यत्र तयोर्व्यवस्थितोऽपि, यथा वा—अधोमन्तर्वेदि मिनोरपथं बहिर्वेदि—इत्यनेन द्वेऽवस्थितौ लक्ष्यते तथाच गोत्रविधेयपिण्डस्वभावादेर्जनकादीनां पिण्डसम्बन्धयुक्तं कार्यमात्रं लक्षयित्वा तद्विपुलित्वं पते । तेन सोऽपि पुत्राद्विषयमपि विपुलित्वमिति सिद्धा भवति । अ. मयूख p. 115. Vide my notes to V. M. pp. 189-191 for explanations. Jai. (III. 7, 13-14) deals with the 2nd example. The bhāṣya of Śābara and the Tantravārtika explain how there will be *vākya-bheda* if the sentence (*ardham* &c.) is literally construed.

1322. भूतभाष्यसमुच्चारणे भूतं भाषायापदिश्यते । शबर on जै. III. 4. 40, p. 276 ; इत्यदेवेतं हि भूतं भाषयित्तपो यज्यार्थः । भूतभाष्यसमुच्चारणे च भूतं भाषायापदिश्यते । शबर on जै. IX. 1. 9 p. 1652 ; भूतं भाषायापदिश्यत इति भूतं इत्येव भाषां कृत्वा निर्वर्तयतीति कृत्वातोऽहं च । इत्युक्तीका on जै. IV. 1. 18 p. 1307. This is called भूतभाष्यसमुच्चारणम् in the Tantravārtika on III. 4. 24 and II. 1. 12 and it has been employed elsewhere by the *vākya-harām* (p. 111 text). शबर very frequently employs this maxim ; vide e. g. on जै. II. 1. 4.

1323. विवाहे तु दत्तकनाम्नेन बीजवतिग्रहीतोऽपि पित्रोर्गोत्रपरिवर्जनं कार्यम् । शबरमख-याद्विनिवन्धेषु तद्विधेयोक्तः । सं. कौ. p. 182 ; विवाहे तु सर्वदत्तकेन जनकपालकयो-रनयोरेव पित्रोर्गोत्रपरिवर्तनं कर्त्तव्यं वक्ष्येतां । नाम सातपथीयं पाञ्चपौषमित्येवं वृक्षनिषम उपलभ्यते । धर्मसिन्धु III वृक्षार्थे p. 161.

with a girl of the gotras of the natural and adoptive fathers is absolute and not restricted to seven or five degrees. Thus if there is no total or absolute cessation of gotra relation with the natural family for all purposes there is no reason why in the case of wealth already taken before adoption there should be a cessation or forfeiture or why the cessation of relation as to riktha should not be restricted to the future. As regards sapinda relationship there is some conflict among the digesta. The D. M.¹²²⁴ states that the *dvyāmuṣyāyana* has to observe the prohibitions against marrying a sapinda girl up to three degrees in the families of the natural father and of the adoptive father, while the simple dattaka has to observe sapinda relationship based upon the presentation of rice balls in the adoptive father's family for three generations (since the adopted son can generally have no particles of the body in common with the adoptive father) and in the natural family sapinda relationship based upon particles of the same body for seven generations. The *Nirṇayasindhu* (III. pp. 290-291) sets out the various conflicting views and gives it as its own opinion that the sapinda relationship must be looked to in marriage up to seven generations in the natural as well as in the adoptive family (in the latter it being based on the offering of balls of rice). According to the V. Mayūkha (p. 119) the simple adopted son has sapinda relationship in the adoptive father's family for seven generations and in the adoptive mother's family for five generations and it seems to hold that there is no sapinda relationship in the natural family (owing to Manu IX. 142). The D. C. (pp. 61-66) appears to hold that the *dvyāmuṣyāyana* has to observe sapinda relationship (as stated in the D. M.), while as to the simple dattaka there is sapinda relationship only in the adoptive family for seven generations (as indicated by Manu IX. 142). The *Dharmasindhu* (III. p. 161) states that sapinda relationship depends in its degrees on the question whether the adoption is made after upanayana in the natural family or before upanayana or whether all saṁskāras from *jātakarma* are performed in the adoptive family.

1224. यदिदुसुभयं विदुषसापिण्डमिधानं तद् इषासुग्धायाणामिधानेन विज-
ह्येन सापिण्डीकरणमिधानम् । सुखदत्तकारणं तु मतिपूर्वपुत्रुले विदुषसे विधान्वयरूपं
सापिण्डत्वे जनककुले सासर्गैरुदभयपान्धपरुपमेवेत्यले मयजेन । दत्त. मी. p. 187; मम तु
यातककुले एकपिण्डद्वान्मिहयान्मिहयान् सासर्गैरुपमेव सापिण्डत्वे, भीजितश्चेति भीजितोक्ते-
र्जनककुलेपि सावदेव । नि. सि. III पूर्वापं p. 291.

The Bombay High Court¹³²⁵ has held that the adopted son cannot marry within prohibited degrees in the natural family, that to that extent an adopted son cannot be considered as not to have been born in his natural family and that the sapinda relationship is recognized in both the families for the purpose of prohibition of marriage.

The Nir. S., the Dharmasindhu¹³²⁶ and the D. C. pp. 48-49 declare that the adopted son can perform the śrāddha of his natural father if the latter has at his death no son or other qualified person to perform it. The Nir. S. and the Sam.¹³²⁷ K. (pp. 185-186) both say that the adopted son has to observe three days' mourning on the death of the natural father and *vice versa*; but the D. M. and D. C. (p. 68) differ and state that the simple adopted son has to observe no mourning for his natural father or other relatives in the natural family. If a married man having a son is given in adoption (which is possible in the Bombay Presidency) the son (born before the adoption) remains in the natural family and does not acquire the gotra and rights to property of the family into which his father is adopted. Yet the father who has gone into another family by adoption has been held to retain his right to give in adoption his son who was born before his own adoption and who remains in the natural family¹³²⁸.

From the above discussion it follows that the person adopted retains the tie of blood with his natural family (so that he cannot marry a girl within the prohibited degrees from that family), the saṃskāras already performed in the natural family are not repeated on him after adoption, he still retains the gotra so far that he cannot marry a girl having the same gotra as his natural father and further he has according to most writers to observe mourning for his natural father. Therefore it is clear that the severance from the natural family brought about by adoption is only partial and restricted to pinda and riktha

1325. *Vide Bai Kesurba v. Shivesangji* 34 Bom. L. R. 1332 at p. 1352 and *Basappa v. Gurlingawa* 57 Bom. 74 at p. 81.

1326. दत्तकस्तु जनकपितुः पुत्राद्यभावे जनकपितुः आह कुप्यादने च सुहृदिषात् । जनकपालकपोषभयोः पितोः सन्तः पभावे दत्तको जनकपालकपोषभचोरपि धनं हरेत्, आह च प्रतिवार्षिकमुभयोः कुप्यात् । धर्मसिन्धु III उत्तरार्धे p. 371.

1327. दत्तकीनकृदिमादिपुत्रेषु अधीनस्त्वमातु स्त्रीषु च सपिण्डत्वेपि प्रसवे मरणे च पूर्वपरिपोषोर्भवेत् विराजमेव न दत्तादादि । ... पितुमरणेपि दत्तकादीनां विराजन् । नि. सि. III उत्तरार्धे p. 524; ब्रह्मदत्तकस्य जनककुले परस्परमशीर्षं नास्वेव । सोऽपिपुत्रमिदृश्याः शौचमिदृशेऽपि विज्ञेयात् । इत्यामुष्यापनश्यत्तुमवैवाशौचमिति । दत्त. च. p. 68.

1328. *Vide Martand v. Narayan* L. L. R. (1939) Bom. 585 (F. B.).

and connected matters and not *complete* as stated or assumed in some decided cases.

The adopted son is entitled to inherit in the adoptive family as fully as if he were a natural born son i. e. he may inherit not only to his adoptive father, but also to that father's brother or cousin if the latter have no son or no other nearer heir. The adopted son also inherits to the adoptive mother and her relations¹³²⁹, viz. her father and brother. Conversely, the adoptive mother and her relations in her father's family are entitled to inherit to him.

Vas. and Baud. both laid down that if after a son is taken in adoption an *aurasa* son is born to the adoptive father the former takes a fourth share. There is conflict among the *smṛtis* and the digests about the share of the adopted son when an *aurasa* is subsequently born, and about the meaning of 'a fourth share'. The *Dāyabhāga* (X. 13 p. 148) and V. C. p. 150 quote a verse of *Kātyāyana*¹³³⁰ that when an *aurasa* son is born, other kinds of sons, if of the same caste as the father, take only a third of the estate. It has been held in Bengal that in these circumstances the adopted son takes one third of his adoptive father's estate. In Benares and among Jains¹³³¹ the adopted son gets one fourth of the estate. The S. V. p. 393 holds that he gets¹³³² $\frac{1}{4}$ th. In Bombay it¹³³³ has been held that the adopted son takes not $\frac{1}{4}$ th of the whole estate, but $\frac{1}{4}$ th of the share of the *aurasa* son i. e. $\frac{1}{4}$ th (the *aurasa* son taking $\frac{1}{4}$ ths). In Bombay the same rule applies among *śūdras*.¹³³⁴ But in Bengal and Madras it has been decided, relying on a passage in the

1329. दत्तकादीनां मातामहा अपि पतिवर्तीनी या माता तपितर एव पितृणावस्य मातामहेभ्योपि समागतान् । दत्त. मी. p. 198 ; शुद्धदत्तकस्य तु पतिवर्तीन्या एव मातुः पितादिगणित्वम् । दत्त. च. p. 61. Vide *Dattatraya v. Gangabai* 46 Bom. 341 for the proposition that an adopted son is competent to inherit the property of his adoptive mother's ancestors.

1330. उत्पत्ते लीरसे पुत्रे तृतीयांशदराः स्मृताः । सवर्णा असवर्णान्तु ग्रामाच्छादित-
भागिनः । कात्या. q. by द्वापभाग X. 13. p. 148, वि. वि. p. 150, विवादचन्द्र p. 80. Vide note 1234 for various readings and Kaup.

1331. Vide *Rukhab v. Chunilal* 16 Bom. 347 (holding that among Jains an adopted son is entitled to $\frac{1}{4}$ th of the estate of the adoptive father when an *aurasa* son is subsequently born).

1332. यथा च कात्यायनः । उत्पत्ते लीरसे पुत्रे चतुर्थांशदराः स्मृताः । ... चतुर्थांशो नाम चतुर्थांश योः समन्तेन परिकल्प्यते तदुत्पत्तेः पञ्चमींश इत्यर्थः । स. वि. p. 393.

1333. Vide *Giriappa v. Ningappa* 17 Bom. 100 (where the texts are exhaustively reviewed by Telang J.), *Bala Krishnayya v. Venkata* 43 Mad. 398, 402 (where Kāt., Vas. and Baud. are referred to).

1334. Vide *Takaram v. Ramchandra* 49 Bom. 672 (held that among *śūdras* an adopted son takes one fourth of the natural born son's share).

Dattakacandrika (p. 98)¹³³⁵ that the adopted son and the subsequently born aurasa son of a sūdra share equally.¹³³⁶ If the estate is impartible property or an estate to be taken by lineal primogeniture and the owner first adopted a son and then he had an aurasa son, it has been held that the subsequently born aurasa son takes the whole estate.¹³³⁷ If there are two brothers who form a joint Hindu family and one of them has a natural born son and the other adopts a son, the adopted son of one brother gets on partition a share of the family estate equal to that of the natural born son of the other¹³³⁸ brother, since the rule of Vas. applies only as between the aurasa and dattaka sons of the same man.¹³³⁹

1335. अत एव दत्तकपुत्रे यथाज्ञाने कदाचिन्नीरसो भवेत् । पितु रिचधाय सर्वस्य भवेत् समभागिनी । इत्यपि वचनं दृष्ट्विदं एव योजनीयम् । दत्त. च. p. 98.

1336. Vide *Asita v. Nirode* 20 C. W. N. 201; *Parrasa v. Subbarayudu* L. R. 48 I. A. 280 (equal share among sūdras).

1337. Vide *Sahabgouda v. Shiddangouda* 1 L. R. (1939) Bom. 314 (F. B.). Manu IX, 163 would support this decision.

1338. Vide *Nagindas v. Bachoo* L. R. 43 I. A. 56 where a passage of the D. C. is explained (at p. 65) which is as follows: एवं धनिमः पुत्रान्तर-सन्ने दूतपितृकरेण दत्तकपौत्रेणापि दत्तोचितंशभागित्वं तदुसरे सर्वद्वयमपीति । न च पौत्रस्य स्वपितृयोगंशभागित्वनिमित्तम् दत्तकरेण धर्षितुः शिष्यामहोरससन्ने माहशपितृव्य-तुल्यस्योऽंशस्य तद्योगपादादत्तकपौत्रः पितृव्यतुल्यमेवांशं लभतमिति वाच्यं, पुत्रस्य दत्तकरेण चतुर्विधः पौत्रस्य तु तृयाधे समानांश इति चेदन्थात् । ततश्च स्वसमागच्छस्य पितृव्योऽंशः शास्त्रसिद्धन्तरेण स्वपितृयोगोऽंशेति यथोक्तमेव साधु । दत्त. च. pp. 82-90.

1338a. It appears to me that the V. Mayūkha went far beyond the spirit of the ancient smṛti texts and of most of the medieval digests when it allowed the adoption of a married man or even of one who had already had a son. The son to be adopted, it was declared by Śaunaka and others, should be a reflection of an aurasa son. Therefore he must be adopted at an age when by proper training and environment he will come to entertain towards the adoptive parents the same feeling that an aurasa son has. Hence it appears to me that the Legislature should intervene and provide that no one can be adopted after his upanayana, or at all events after his marriage, in the natural family. It is natural for a sonless man or a widow to feel, apart from religious considerations, the necessity of a young person as a solace, security and help in old age, and to adopt a person. Even in England by the Adoption of Children Act (16 and 17 Geo. V. chap. 29) the adoption of a minor is now allowed after observing certain formalities. Further, no adoption by a widow who has not become major according to the Indian Majority Act should be held valid. An agreement or a transfer of the smallest property by a person who is a minor according to that Act is held to be absolutely null and void. There is no reason why an adoption by a widow of 15 or 16 should be upheld when that adoption divests her of all (or now half of) the property of the husband held by her.

CHAPTER XXIX

ORDER OF SUCCESSION AFTER THE SON

It has been stated above that *dāya* is either *apratibandha* or *sapratibandha* and that sons, grandsons and great-grandsons take the first kind of *dāya*. If a man has no son either *aurasa* or secondary (viz. the *dattaka*, the other kinds of sons being now forbidden or obsolete), then his property devolves in a certain order. When a man dies sonless and is a member of a joint Hindu family then on the surviving coparceners the whole estate devolves except that after 1937 (by Act XVIII of 1937) his widow takes his place as to the joint family property. But if he dies separated and has male issue (from whom also he is separate) then his male issue will succeed to him in a body viz. his son, grandson (son of a predeceased son) and great-grandson (son of a predeceased son's predeceased son) will together take his separate property *per stirpes*. From Manu IX. 137 (which is the same as Vas. 17-5 and Viṣṇu Dh. S. 15. 46) and 186 and Yaj. 1. 78 it follows that the son, grandson and great-grandson equally confer great spiritual benefit and so are the principal group of heirs. According to the strict theory of the *Mitaksarā* as stated above, son, grandson and great-grandson take by birth an interest even in property acquired by a man himself, but they have no power to prevent him from alienating it. If one or more out of a man's sons, grand-sons or great-grandsons are separate from him then on his death his self-acquired property will first be taken by those sons, grandsons and great-grandsons that are joint with him and if none of these is joint with him, the separated son, grandson and great-grandson will succeed *per stirpes* to his estate.¹³³⁹

This view is at least as old as the Baud.¹³⁴⁰ Dh. S. I. 5. 113-115 which speak of the three ascendants of a man, of himself,

1339. Vide *Gangadhar v. Ibrahim* 47 Bom. 556, *Marudayi v. Doraisami* 30 Mad. 348. In *Ramappa v. Sithammal* 2 Mad. 182 (F. B.) a separated son was preferred as an heir to the widow of the deceased.

1340. अवि च यपितामहः पितामहः पिता स्वर्णं सोढुर्नो भ्रातरः सर्वर्णायाः पुत्रः पौत्रः यपौत्रस्तदुत्तरजैः तेषां च पुत्रपौत्रमविभक्तद्वारं सपिन्दावाच्यते । विभक्तद्वारमपि संकुलपात्राच्यते । असात्त्वेषु तद्वारमिदं द्वारं भवति । वो. च. दृ. I. 5. 113-115. The *द्वारभाग* (XI. 4, 5, 37) and *द्वारपत्र* p. 189 quote पा., विष्णु and वो., read 'सत्त्वह्वयेऽु तद्वारमिदं द्वारं भवति' and अविभक्तद्वारद्वार and explain वो. at length.

of his full brothers and of his son, grandson and great-grandson from a savarna wife as one group called *avibhakta-dāya sapindas* and that in the absence of these only, the wealth of a man goes to his *sakulyas*.

On the succession to the property of a man dying without male issue (i.e. without son, grandson or great-grandson) the basic texts are two verses of Yājñavalkya¹³⁴¹ (II. 135-136): 'The lawfully wedded wife, the daughters and (the daughter's son), the parents, the brothers, their sons, *gotrajas* (agnatic kinsmen), *bandhu* (cognatic relation), a pupil, a fellow student—on failure of each preceding one out of these each succeeding one is entitled to take the wealth of a man who is dead (lit. who has gone to heaven) and who leaves no male issue. This rule applies to all varnas'. The Viṣṇu Dh. S. (17. 4-15) is almost to the same effect. The word 'aputrasya' in Yāj. is taken to mean one having no son, grandson or great-grandson (at the time of death) by V. C., Raghunandana and Mitrāmīśra¹³⁴². The Mit. explains the words 'to all varnas' as applying even to all that are the offspring of *anuloma* or *pratiloma* unions.

We have separate rules for inheritance to the property of males and to that of females. Then there is great difference as to the rights of women as heirs. First, inheritance to the property of males will be taken up. Here again the fundamental principles are different acc. to the Mit. and the Dayabhāga.

Among the heirs (apart from male issue) of a man as regards his separate property the first is the widow. The wife's right to succeed to her deceased husband's estate, when he died separated and un-reunited, was acknowledged only after a long struggle extending over centuries. The passage of the Tai. S. VI. 5. 8. 2 speaking of women as 'adāyādih' has already

1341. पत्नी दुहितरथैव पितरौ भ्रातरस्तथा । तत्पुत्रा गोत्रजा वधुक्षिपसम्बन्धु-
चारिकाः । एषामभावे पूर्वैश्च धनभाद्रुशरोक्षरः । स्वर्थातरप ह्यपुत्रस्य सर्ववर्णैर्नरैः । पा.
II. 135-136. The first is also लघुहारीत 64-65. Translations of these verses
are cited in many cases; vide, for example, Lallubhai v. Mankorebai
2 Bom. 388, 416.

1342. अनपत्यरप दुश्चपौत्रमपौत्रहीनस्य । दुश्चः पौत्रः पौत्रादौ वा—दुःखादिना अमीयां
पाठक्रमेणैव स्वधार्मिकारे सिद्धे तत्समानशीलस्य रिच्यमहजस्यापि तथेवाधिकारसिद्धेः ।
मि. सि. p. 151; अथ अपुत्रपदं दुश्चपौत्रमपौत्राभावापरं तेषां पार्श्वपक्षेणदुःखत्वाविशेषात् ।
द्विपत्रस्य p. 189; अपुत्रपदं पत्नीवाविदुः अप्रमाथं पौत्रमपौत्राभावापेक्षया । स्प. प्र.
p. 503.

been quoted (on p. 606). The meaning of that word is somewhat dubious, as will be shown later on. The Āp. Dh. S. II. 6. 14. 2 states generally¹³⁴³ that in default of a son the nearest sapinda succeeds but does not expressly mention the wife as an heir, though it mentions (in II. 6. 14. 4) the daughter as a possible heir. Baud. also omits the wife as an heir. Vas. mentions no woman as heir. Gaut. 28. 19 appears to state that the wealth of one who dies without issue should be taken by his sapindas, sagotras and sapravāras or his wife (i. e. according to Haradatta, the wife takes a share only along with the nearest sapinda or sagotra and not exclusively). Haradatta himself was of this view. Manu does not declare that the wife is the heir of a sonless man and there are certain passages which impliedly exclude her, as e. g. Manu IX. 185 (the father takes the wealth of a man dying sonless or his brothers take it), IX. 217 (the mother should take the wealth of a sonless man). Śaṅkha (q. by the Mit., Dāyabhāga XI. 1. 15) prescribes that the wealth of a man dying without issue goes to his brothers, failing them the parents take it or the eldest wife.¹³⁴⁴ Devala (q. by the Dāyabhāga XI. 1. 17-18 and V. R. p. 593) arranges the heirs in order as full brothers, daughters, father, half brothers, mother and wife. It may be noticed that in the days of Kalidāsa the sonless widow did not succeed to the wealth of her deceased husband, but was only entitled to maintenance and that the estate escheated to the king. This is clear from the letter written by the minister to king Duśyanta about the wealth of a merchant who perished in a ship-wreck (Act VI). Yāj. and Viṣṇu among smṛti writers were probably the first to clearly enunciate the rule that the wife was the foremost heir of a man dying without male issue. Br. makes the wife the first heir of a sonless man and supports his

1343. पुत्राभावे वा अप्राप्तका सपिण्डः । आप. ध. सू. II. 6. 14. 2: पिण्डगोत्रवि-
सम्बन्धा रिच्ये भजेत्य स्त्री वानपत्यस्य । गौ. 28. 19 on which हरदत्त says: 'स्त्री तु सर्वैः
समोवादिभिः समुचीयते । यदा सपिण्डाद्यप्यो दृष्टान्ति तदा तैः सह पत्यप्येकमेव हरेत् । ...
पत्नीवापस्तु आचार्यस्य पक्षो न भवति ।'. On आप. II. 6. 14. 2 he gives the
view of गौतम, 'गौतमस्तु पुत्राभावे पत्न्याः सपिण्डादिभिः समोऽश्नात् । ... वधमप्येतनेव
पक्षे रीचयामहे'.

1344. स्वर्णानस्य कपुधरस्य अनुगामि ब्रूयन् तदुभावे पितरौ हरेपत्नी ज्येष्ठा वा पत्नी ।
शङ्ख (q. by मित्रा, on वा. II. 135 and अपराधे p. 741). दायभाग XI. 1. 15 p. 154
ascribes this text to शङ्खलिखित, पैठीनासि and वसु and adds समोवशिष्टपसङ्ग-
चारिणः after पत्नी. अपराधे also ascribes it (p. 744) to शङ्खलिखित and पैठीनासि.
The Mit. explains that it applies to re-united brothers.

opinion with reasons. He says:¹³⁴⁵ 'In the Veda and in the doctrines of the smṛtis and in popular usage the wife is declared to be half the body of the husband, equally sharing the consequences of good and evil acts. Of him whose wife is not dead half the body survives. How can another obtain the property, while half the body (of the deceased) lives? Although kinsmen, although his father, mother or his relatives may be alive, the wife of a man dying without issue succeeds to his share. A wife dying before her husband takes away his sacred fires (i.e. she is cremated with the sacred Vedic fires, if he be an Agnihotrin); but when the husband dies before the wife, she takes his property, if she be chaste'. Even when Yāj. proclaimed the paramount right of succession in the case of widows there were other smṛtis and some early commentators who did not subscribe to that view. Nār. (dāyabhāga, 25-26) provides that if among several brothers one who is childless dies or becomes an ascetic the others should divide the property excepting stridhana, that they should make provision for his women till their death in case they remain faithful but if they are otherwise (i.e. unfaithful) they may cut off the allowance'. Nār. (dāyabhāga, 50-51) provides that on failure of sons, the daughter, *śikulyā, bandhus*, a man of the same caste, the king succeed in order and thus omits the wife altogether. Vyāsa¹³⁴⁶ (quoted by Haradatta on Gaut. 28.19 and by Sm. C. II. p. 281) holds that a wife may take the whole of the husband's property if it does not exceed 2000 paṇas in value. The Mit. tells us that Śrīkara espoused this position that the wife takes the whole if

1345. आग्नेये स्मृतितन्त्रे च लोकाचारे च स्मृतिभिः । अरीर्यं स्मृता जाया पुष्पा-
पुष्पकले सना ॥ पश्य जीपस्ता भार्या देवार्थं तस्य जीवति । जीवत्यर्थं अरीर्यं जपमन्यः समाप्नु-
यात् ॥ सकुर्यैविद्यमानेषु पितृभ्रातृसनाभिभिः । अनुत्तरं प्रतीत्यस्य यानी तद्भ्रातृहारिणी ॥
पूर्वं स्मृता अग्निहोत्रं मृत्युं भर्तारं तद्वत् ॥ सिद्धेन पतिव्रता नारी धर्म एव समाप्तः ॥ बृह. q. by
अपराज. pp. 740-41, दायभाग XI. 1. 2. pp. 149-150, कुल्लूक on मनु IX. 187,
स्मृतिच. II. pp. 290-91 (ascribes the last to मजापति). The *mita*. reads the
third verse as कुल्लूके विद्यमानेषु ... सनाभिषु. The *śr.* VI. 1. 8. 5 reads 'अर्धं
वा एव आत्मनो दत्तानी'. Vide H. of Dh. vol. II. p. 438 n. 1015 for passages
from the Veda and Mahābhārata for the wife being deemed to be half of the
body. pp. pp. 556-57 for husband and wife enjoying the fruits of their
actions together, and p. 538 for wife's cremation with the Vedic fires and the
sacrificial utensils of the husband. Both वसिष्ठ 21. 15 and पराशर X. 26 say
'पतार्यं अरीर्यं पश्य भार्या सूर्यं विदेत् । पतिव्रता अरीर्यं निष्कृतिर्न विधीयते ॥'.

1346. त्रिसहस्रपयो द्वापाः दत्तये द्वेयो धनस्य तु । पश्य भार्या धनं दत्तं सा यथाकाममा-
प्नुयात् ॥ प्यास q. by हरदत्त on मी. 28. 19, गव्य. नि. p. 450, विवादचन्द्र p. 72. The
अनुशासन 47. 23 reads, त्रिसहस्रपयो द्वापाः... भार्या तस्य धनं दत्तं यथा भोक्तुमर्हति ॥.

the property is small, but only maintenance if the property is large and refutes it by saying that it is opposed to the spirit of Yāj who allows a share to the wife and the mother even along with sons when even joint family property is being partitioned and that the view is also liable to the fault of *vidhicaitanya* on the analogy of the Mīmāṃsā rule stated above on p. 605.¹³⁴⁷ The same text of Yāj. will have to be held as laying down only maintenance when the husband left great wealth, and also laying down a share equal to that of a son when the husband leaves inconsiderable wealth.¹³⁴⁸ Another view was maintained

1347. विध्वनो नपत्यस्य । बीजं वा लिप्सेत । नौ. 28. 19-20. This is explained by पादेष्वर as 'स्त्री वा रिक्ते भवेत्त यदि बीजं लिप्सेत्'. The *mita*, says that this really means that there are two courses open to the widow, viz. she may remain chaste and succeed along with the sapindaś or she may resort to niyoga.

1348a. Jai. VII. 3. 19-23 as understood by the Mit. may be briefly explained as follows: The Cāturmāsya (seasonal sacrifices) are four, Vaiśvadeva, Varunapraghāsa, Sākamedha, Sunāśriya (vide H. of Dh. vol. II. pp. 1091-1105 for description). In regard to these the following texts occur in the Veda and are cited by Sabara and others: द्वयोः प्रणयन्ति । तस्माद् द्वौ पन्ति उक्तं वा एतौ यज्ञस्य यद्द्वयप्रायसश्च साकमेधश्च । तस्माद् द्वौ पन्ति । ... उयात्र पन्ति । न वैश्वदेवे उत्तरवेदिपुष्पवन्ति न सुनासीरीये । (They carry forward the fire in these two; therefore they march on two; indeed the Varunapraghāsa and Sākamedha are the two thighs of *yajña*; therefore they (are said to) march on two; they fill with earth (the *uttaravedi*) here, but not so in Vaiśvadeva nor in Sunāśriya). Sabara reads 'उत्तरवेदिपुष्पवन्ति' while Mit. reads as above. *Pranayana* means 'carrying towards the east fire from the Gārhapatya fire to the Āhavanīya.' There is *pranayana* in the Darśapūrṇamāsa which is simple (and without details) and there is also *pranayana* in Agniṣoma which is full of details (and not simple). An *uttaravedi* (vide H. of Dh. vol. II. pp. 1096-1097 for description) is not required in Darśapūrṇamāsa, but it is required in a Soma sacrifice. The cāturmāsyaś are modifications (*vikṛti*) of the Darśapūrṇamāsa, so that whatever is prescribed in the latter follows in the absence of express directions as a matter of course in the former. In the texts quoted above the words 'dvayoh pranayanti' lay down a *vidhi* and the words 'tasmād ... sākamedhasa' contain an *arthavāda* which forms a syntactical whole with the *vidhi* and which only eulogises it. The *pūrvapakṣa* argues: As cāturmāsyaś are modifications of Darśapūrṇamāsa, it is unnecessary to lay down expressly a simple *pranayana* in them; therefore, the *pranayana* prescribed in 'dvayoh pranayanti' must be the *pranayana* as described in a Soma sacrifice. Further the prohibition of an *uttaravedi* in Vaiśvadeva and Sunāśriya indicates the same, since a prohibition implies that there was a fear that what is prohibited would have otherwise followed and since an

(Continued on the next page)

by the Smṛtisaṅgraha and Dhāreśvara, viz. that the wife would

(Continued from the last page)

uttaravedī is required only in a Soma sacrifice. Therefore the pranayana prescribed in 'dvayoh pranayanti' is of the Soma-pranayana type. To this a partisan of the *siddhāntin* (*siddhāntakadeśin*) replies as follows:—The real view is that in *dvayoh pranayanti* the pranayana is of the simple *darśa-pūṇamāsa* type and the prohibition about *Vaiśvadeva* and *Sunāsiriya* is not to be explained as you do: in the words 'upāra vapanti' an *uttaravedī* is generally (without exception) prescribed for all *cāturmāsya*s, but in the following two sentences 'na vaiśvadeve &c.' the preparation of *uttaravedī* is forbidden in the case of *Vaiśvadeva* and *Sunāsiriya*; therefore the partisan says that the idea is that, though the pranayana is of the simple *darśapūṇamāsa* type, yet an *uttaravedī* is prepared in the 2nd and 3rd but not in the first and fourth of the *cāturmāsya*s. The *pūrvapakṣin* retorts that even on this construction *vidhivaijāmya* would still be there as follows: as there is prescription of *uttaravedī* in all four and prohibition in two (viz. the first and fourth of the four *cāturmāsya*s), there is an option of *uttaravedī* in these latter two (as the rule is 'nyabala-virodhe विकल्पः') and there is no option as to the other two and there will arise the fault of *vidhivaijāmya*, the same sentence viz. 'upāra vapanti' being taken as an unqualified and independent rule about the 2nd and 3rd of the *cāturmāsya*s and taken as an optional rule as to the 1st and 4th.

The proper *siddhānta* view is as follows: Though the words 'dvayoh pranayanti' are very general, they are to be narrowed down so as to refer to only two (viz. 2nd and 3rd of the *cāturmāsya*s) on account of the recommendatory passage that follows (speaking of *Varnapraghāsa* and *Sākamedha* as the thighs of *cāturmāsya yajña*). The *vidhi* and the following *arthavāda* form one syntactical whole (*ekavākya*), as laid down by Jai. I. 2. 7. The *arthavāda* passage means that just as a man marches on in strength if his thighs are strong, so the *cāturmāsya* sacrifice reaches a successful close by means of *Varnapraghāsa* and *Sākamedha* in which an *uttaravedī* is specially prepared and fire is laid thereon (being taken from the *āhavanīya* fire by the *adhvaryu* and *prati-prasthātr*). Therefore the meaning is that there is pranayana in the 2nd and 3rd out of the four *cāturmāsya*s and *uttaravedī* is prescribed in those two alone and the words 'there is no *uttaravedī* in *Vaiśvadeva* and *Sunāsiriya*' are a mere *anuvāda* (repetition of what is already known) and not a prohibition, as in the words 'fire should be kindled on the earth and not in the sky nor in heaven'. On this interpretation there is no *vidhivaijāmya*. Sabara makes two *alīkaraṇa*s of Jai. VII. 3. 19-23, while Kumārila makes one *alīkaraṇa* of these seven sūtras. He further differs as to the *siddhānta*, which, according to him, is that in 'dvayoh pranayanti' there is a special (*apūrvā*) kind of pranayana proscribed, *prākṛta* (of *darśapūṇamāsa* type) and *saṃhita* pranayana being the two other views which he rejects. The Subodhini on the Mit. very lucidly explains this discussion and concludes: पश्चात्तत्रैकदशमो विधिवैषम्यं द्वावस्यधा 'एतत्तः कार्यः समोशिकाः', 'मातापत्येन समं तरेत्' इत्यत्र च सहदासोऽपि अश्वत्थशब्दादपि भर्तृवृत्तत्वेन 'भरणं चास्य कुर्वन्' इत्यादिवाक्यपर्यालोचनया जीवनीयवृत्तत्वेन परी खलपश्यन्ते तु वाक्यान्तरैरेषेभ्यः निश्चयपूर्वकसमोशपर्यायेति श्रीकाश्यपकृपाश्रयाभेदि विधिवैषम्यदोषो दुर्गार इति । The Bālabhāṣi repeats the Subodhini almost word for word. This *nyāya* occurs in *Dāyabhāga* XI. 5. 16 also.

take the estate of her sonless deceased husband if she submitted to *niyoga* and procured a son for the husband. This view derived support from Gautama 28.19-20, Vas. 17.65 (who prohibits *niyoga* if resorted to through greed of wealth), and Manu IX.146 and 190 (which call upon the surviving brother to procreate a son on the widow of his brother and to hand over the deceased's share to that son). This view is refuted by the *Mit.*¹³⁴⁸ Sm. C. II. p. 294, V. P. pp. 495-497.

Even Medhātithi,¹³⁴⁹ generally a liberal writer, holds that the widow is prohibited from inheriting her husband's wealth.

The *Mit.* after an elaborate statement and refutation of the views of Śrīkara, Dhāreśvara and others due to the conflict among *smṛti* texts on the question of the widow's right of succession, establishes the proposition that the widow, if chaste, is entitled to the whole of her deceased sonless husband's wealth.¹³⁵⁰ Almost all writers since the time of the *Mit.* accept the widow's right to succeed to her husband's wealth. Many writers note that the *smṛti* texts on the heirship of the widow are in conflict.¹³⁵¹ They explain verses like those of Nār. (dayabhāga 25-26) providing only maintenance for women either as

1348. तथा सङ्गच्छकारः । भावतु यस्मिन्नेषु संयुतेष्वप्यसत्तु च । सुभक्षिणाभि-
योगस्था पत्नी धनमाप्नुयात् ॥ इति । सुभक्षिणाभियोगस्थेति धारेश्वरमतं निश्चयपाद्विधिः
सम्बन्धवित्तादुपेक्षणीयम् । स्मृतिच. II. p. 294; एतेषामन्योन्यविरुद्धानां वचनानां
धारेश्वर इत्येव स्पष्टमाह । विनकासंयुक्तानुरूपस्य पत्नी यदि नियोगमङ्गीकुरुते तदैव
पतिधनं लभते । अनियोगादिभ्यां तु तस्यामन्विकसंयुक्तपत्नीकद्रव्यमात्रमेव । नियोगद्वारा-
युक्तपत्न्याः पतिस्वायतेवस्तमित्यम् । स्प. प्र. p. 493.

1349. अत्रो कस्मैधातुपिमा पत्नीनामभिशालितं निषिद्धमुक्तं तदुपसम्भूतम् । पत्नीनामभिश-
ालितं सुहृत्स्वप्राप्तिर्भवति । निषातिपिनिषाकुर्वन् न धीयाति सती सनः ॥ कुल्लुक. ०५ मयु
IX. 187.

1350. तस्मादुपुचरप स्वर्धनस्य विनकासप्राप्तेऽनुष्ठितो धने परिणीता स्त्री संपत्ता सकल-
मेव युद्धातीति स्थितम् । मिता. ०५ पा. II. 135.

1351. अथापुचरप सुहृत्स्य धने परस्परविरुद्धवचनदर्शनेन श्रावणान्तरो विपद्भूते ।
दायभाग XI. 1. 1; एतद्विरुद्धातीति वाक्यानि लक्ष्यन्ते । मिता. ०५ पा. II. 133.
It may, however, be noted that in a small treatise called *श्रुतसुत्राधनसंग्रह*
of which there are three Ms. in the Maharaja's Sarasvati Mahal Library
at Tanjore (Nos. 19003-5 described in vol. XVIII of their new Descriptive
Catalogue) an attempt is made to establish that, if a man dies leaving a widow
and his mother, both take equal shares in the estate. The mainstay of the
argument is a verse of Kāṭi. quoted in the *वृ. संपू. १* 'भो कुम्भेति वत्सलं सुहृद्भू-
वने रता । न कुर्वादि सुहृत्तां चैतः पिण्डे नियोजयेत्' from which the conclusion
drawn is 'श्रुतसुत्रादिपुण्ड्रवने रतायास्तदुन्मतायाः संपत्तायाः तद्विधायां च सायां
पत्न्या धनधारितं मायया'.

referring to exclusively kept concubines of the deceased or to the wives of re-united coparceners.

Patni means a woman who is married to the deceased, the word being formed from 'pati' with an affix in the sense of 'being fit to join with the husband in the performance of sacrifice' (Pāṇini IV, 1, 33). The Sm. C. II, p. 290 quotes a verse that a woman who is procured for sexual intercourse in exchange for money is only a *dāsī* and is not a *patni* and therefore is not entitled to inherit to a sonless paramour.¹³⁵² The Baud. Dh. S. I, 11, 20 quotes a similar verse. Several texts require that the widow must be chaste before she can claim the inheritance of the deceased. A text attributed to Vṛddha-Manu¹³⁵³ says, 'The wife alone, being sonless and keeping the bed of her lord unsullied and leading a life of religious observances, may offer pinda to her deceased husband and take his entire estate'. Kāt. (926) also declares that 'the wife who is chaste takes the wealth of her husband'. The widow must be chaste at the time the inheritance opens. The courts have held that once the husband's estate is vested in the widow, it will not be divested or forfeited by reason of *unchastity subsequent* to the death of the husband.¹³⁵⁴ If the widow remarries after inheriting, then, though the remarriage of a widow is legalized by the Hindu Widows' Remarriage Act (XV of 1856), she forfeits the estate of the husband taken by her or the estate which she took as a widowed mother of her deceased son and it passes to the other heirs of the husband or son as if she were then dead and this applies to widows of all castes according to almost all High Courts (even when remarriage

1352. कथंकीता तु या नारी न सा पत्नी विधीयते । न सा देवे न सा पित्र्ये द्वासी तं कायधोक्तीम् ॥ १ ॥ by स्मृतिच. II, p. 290, द्य. म. p. 488; कीता वृष्येण या नारी सा न पत्नी विधीयते । सा न देवे न सा पित्र्ये द्वासी तं कायधोक्तीम् । श्री. च. सू. I, 11, 20. This is cited as Manu's in द्य. नि. p. 397, which quotes a similar verse of Yama on p. 398, द्य. च. 458 says 'अत्र च दासीवकथनमनुव्याधकर्मसु महापितृव्याभावाभिप्रायेण । न तु दासीवद्वृत्त्याभावाभिप्रायेण । विवाहितत्वादेव परदारत्वभावात् ।'

1353. अयुवा शपथं भर्तुः वातपत्नी व्रते स्थिता । पत्यवे दद्यात् तत्पिण्डं कुलनमेवं हमेव च । इदमत्र ॥ १ ॥ by मिता. on वा. II, 133, द्वावनाम XI, 1, 7, नि. र. p. 389; पत्नी भर्तुर्धनहरी वा स्वाध्यायमिच्छारिणी । कात्या. १. by the मिता. on वा. II, 133.

1354. Vide *Maniram v. Kerry* L. R. 7 I. A. 115; *Sellam v. Chinna-maal* 24 Mad. 441; *Nehala v. Kishan* 2 All. 150 (F. B.)

is allowed by the custom of the caste to which the widow belongs).¹³⁵⁵

According to the *Dayabhāga* there being no *apratibandha dāya*, the widow of a sonless member even in a joint family succeeds to his share in the family property and there is no difference between joint family property and separate property.

In the case of *sūdras*, if the owner dies leaving a widow or a daughter or a daughter's son and an illegitimate son, it has been held by the courts following *Yaj. II. 134*, the *Mit.* and *Dayabhāga IX. 31* that the widow or daughter or daughter's son takes one half and the illegitimate son takes the other half.¹³⁵⁶

The rights of the widow in property inherited by her from her husband are limited. *Kaut. III. 2* was¹³⁵⁷ probably the first to propound clearly the characteristics of the Hindu widow's estate and the verse of *Kāt.* quoted below is remarkably close to the words of *Kaut.* The *Mahabharata* (*Anusāsana* 47. 24) states that women have only the right to enjoy the estate of their husbands and that they should not waste or destroy the

1355. *Vide Vithu v. Govind* 22 Bom. 321 (F. B.) and *Murugai v. Vennakali* 1 Mad. 226; but *Dhola v. Kunsilla* 55 All. 24 (F. B.) holds that a woman belonging to a caste in which remarriage of widows is allowed by custom does not forfeit on remarriage the estate of the first husband which she took as his widow, the principal reasons being that there is no express text about forfeiture on subsequent unchastity and that it would be absurd to hold that a widow, who, on the F. C. ruling in 7 I. A., does not forfeit the estate taken as heir by subsequent unchastity, should be liable to forfeit it by remarriage (which presumes that she wants to live a decent life). Looking to the expressed object of the Hindu Widows' Remarriage Act, section 2 should not have been so interpreted as to apply to widows who could remarry according to caste custom before the Act.

1356. *Vide Shesigiri v. Gireva* 14 Bom. 282; *Neenakshi v. Appakutti* 13 Mad. 226 (in this case the original authorities are mentioned and discussed). *Vide* अनायुक्तो हरेमर्तुं पुष्टिपूर्वा सुवाहने । या. II. 134 ; अथ परिणीतायुक्ता न सन्ति तदा कुलम् धने दासीपुत्रो यद्विवाहादि परिणीतायुहितरस्तायुक्ता वा न सन्ति । तामद्वाते तु अर्धे भागिक एव दासीपुत्रः । निता. ; तदाह राजबन्धवः । अथा ... हते । सति तु दौहित्रे समे विभक्त्य युद्धीयाद्विषयाश्चयात् । दायभाग IX. 31 p. 143.

1357. अनुयायि पतिशयने गालयन्ती सुवसमीति श्री यनमायुःशायि भुज्जति । आयुर्धर्म हि श्रीयनम् । ऊर्ध्वं दायार्थं तच्छेत् । अर्थशास्त्र III. 2 p. 123; श्रीणां स्वपतिद्वारास्तु उपभोग्यः स्मृतः । नापहारं शिष्यः कुरुः पतिवित्तान्कथंयम । अनुशासन 47. 24 q. by विशदचन्द्र p. 71, नि. चि. p. 132, the *अ. म.* p. 491, दायभाग XI. 1. 60 (latter three quote it as from the *महाभारत*).

husband's estate (by gift, sale &c.). Br.¹⁵⁵⁸ (S. B. E. vol. 33 pp. 377-78 verses 50-51 and 53) states: 'when the husband is separate his widow takes all his various kinds of property such as a pledge, except immovable property. After having received movable and immovable property, gold, inferior metals, grain, liquids and clothes the widow shall cause (her husband's) monthly, six-monthly and annual śrāddhas to be performed. Let her honour with funeral offerings and pious charity her husband's paternal uncle, *gurus* (elders), daughter's son, sister's son and maternal uncle as also aged or helpless persons, guests and women'. Mādhava (Par. M. III. p. 536) explains that 'except immovable property' means that she is prohibited from making a sale of immovable property without the consent of the male kinsmen. The V. Mayūkha (p. 138) accepts this interpretation and modern courts have done the same. In *Damodar v. Purmanandas* ? Bom. 155 it was held that a widow to whom movable property was bequeathed by the will of her husband takes it absolutely. But here the movable property was not *inherited* by her and as it was a bequest by will it became her *strīdhana* according to Nār. (q. by V. M. on p. 155). Besides, this was a case from Bombay Island and was governed by the law of V. Mayūkha. In some early cases in Bombay it had been held that a widow in Western India under the Mitākṣarā had absolute power over the movable property inherited by her from her husband. In *Gadathur v. Chundrabhagabai* 17 Bom. 690 (F. B.) it was held that under the law of the Mitākṣarā a widow has no power to bequeath movable property inherited by her from her husband and that to that extent the decision in *Damodar v. Purmanandas* must be treated as of no authority if it be interpreted to have decided the point in that way. In *Shri Chamanlal v. Doshi Ganesh* 28 Bom. 453 it was decided that even under the Mayūkha a widow inheriting movable property from her husband has no

1558. पद्धिभक्तो धने किंचिदाध्यादि विविधं स्तुतम् । तज्जाया स्थारं सुकृता लभेत्
सुतभर्तुका ॥ जङ्गमं स्थारं हेनं कुप्यं धामं रसास्वरम् । आद्याय वीरयेच्छादं मासवापना-
निकादिभिरम् । पितृपुत्रसुहृद्भिर्वाभर्तुः स्वकीयमादित्याम् । इज्यैक्यपद्वीर्यां बुद्ध्यान्धा-
निधीय चिपः ॥ बुध. q. by स्तुतिच. II. p. 291, नि. र. p. 590 (last two), मदनरत्न
(folio 90b), परा. मा. III. p. 536, च. मनुष्य pp. 137-138. The स्तुतिच., मदन-
रत्न and च. मनुष्य ascribe the last two to यज्ञागति. The मदनरत्न says that the
verse पद्धिभक्तो was ascribed to बुध. by the स्तुतिचम्बिका, but it should be
disregarded as it is opposed to the verse जङ्गमं स्थारं quoted in the कल्पवृक्ष
and others as that of बुध. १ स्थारं सुकृतेरभिधानं द्वायाद्यानुमतिमन्तरेण स्थावरविक्रय-
निषेधपरमिति माधवीये विद्यारण्यभितरणाः । मदनरत्न (folio 90b).

power to dispose of it by will. Lastly in *Pandharinath v. Govind* 32 Bom. 59 it was held, after an elaborate examination of authorities, that a widow is not under the *Mitākṣarā* competent to make a gift of the movables inherited by her from her husband and it was said (on p. 75) that possibly with the spread of education amongst, and the general emancipation of, their women Hindus may be led to call in aid the relief of Legislature. In cases arising under the *Mayūkhā* a widow may dispose of movable property inherited by her from her husband by gift *inter vivos* but not by will. Kat.¹³⁵⁹ (921, 924-925) propounds the limitations of the widow's rights as follows: 'A sonless widow, preserving the bed of her husband (unsullied) and residing with her elders and being self-controlled, should enjoy (her husband's property) till her death; after her the (other) heirs (of the husband) would get it. A wife who preserves (the honour of) the family would get the share of her husband when he is dead till her death, but she has no power to make a gift, sale or mortgage. A widow engrossed in religious observances and fasts, fixed in the vow of celibacy, always intent on restraining her senses and making gifts goes to heaven even though sonless'.¹³⁶⁰ These verses show that the widow was to enjoy the income of her husband's property till her death; that she could not sell or mortgage or give away immovable property without the consent of the heirs that would come after her and that for religious and charitable purposes or those that conduce to the spiritual welfare of her husband a widow had large powers of disposition. These rules

1359. अशुभा इषमं भर्तुः पालयन्ती सुरी रिधता । भुञ्जीतामरयाक्लान्ता दायादा उर्व्व-
माच्छुभः ॥ कात्या. १. by दायाभाग XI. 1. 56. स्मृतिच. III. p. 292; दूते भर्तुरि मर्त्ये
लभेत कुलपालिका । दायाजीवं न वि स्वाम्यं दायाधमनविकये । व्रतोपवासनिरता ब्रह्मचर्ये
भक्त्यरिषता । व्रतदानरता मित्रमनुवादि दिवं व्रजेत् ॥ कात्या. १. by स्मृतिच. II. p. 292,
२२. मयुख p. 138. The D. B. adds, 'आः पत्नी दुहितरश्चेत्यादिना वे पूर्वपूर्वस्वामाये
परभूताधिकारिणी निर्दिष्टान्ते यथा पत्न्याधिकार्यामभावे पुत्रीपुत्रस्था जगताधिकार्याः पत्न्या
अधिकार्यमभवेपि भोगावशिष्टं धनं पुत्रीषु.' 'दायाभाग XI. 1. 59. The first verse is
quoted in *Dhugwandan v. Myns Bacc* 11 Moo. I. A. 487 at p. 512,
8 Mad. 290, 292, 5 Patna 646, 678. These verses are quoted or referred
to in 8 Mad. 290, 292, *Pandharinath v. Govind* 32 Bom. 59 (which holds
that according to the Mit a Hindu widow cannot make a gift even of the
movables inherited by her from her husband), 42 Bom. 136, 141.

1360. It was believed that one to whom no son was born did not go to
heaven (vide Ait. Br. 'nāpurasya lokosti' quoted above on p. 654 n. 2239).
An exception was made in the case of those who observed perpetual
studenthood (Āp. Dh. S. I. 1. 4. 29) and Manu extends it to chaste widows
(V. 159-160). Vide Viṣṇu Dh. S. 25. 17.

have been accepted by modern decisions; vide *Collector of Masulipatam v. Choudy Venkata* 8 Moo. I. A. 500 at p. 551 for an oftquoted passage about the widow's powers of disposal. There is a large volume of case law on the widow's powers of alienation, on what are religious and charitable purposes and about the consent of the kinsmen, which have to be passed over here. The heir or heirs expectant on the death of a widow are called reversioners or reversionary heirs in the decided cases. There is no exact Sanskrit word to convey the same idea except 'dayada' that occurs in Kat. quoted above and in D. B., which makes it clear that the reversioners take the estate after the widow's estate ends (by death, remarriage, surrender &c.). The doctrine of the surrender by the widow of her estate in favour of the next heirs (the reversioners) whose estate is said to be accelerated is based on meagre foundations viz. the words of Kat. and the D. B. quoted in n. 1359. Judicial decisions, however, have raised a stupendous structure on these slight foundations; but they are passed over here.

If a man dies leaving several widows then they may partition the property equally among themselves, as stated by the Mit. ¹³⁶¹

If after partitioning among themselves, one of the widows dies, the portion given to her comes to the other widow or widows i. e. there is survivorship among them and no one else can succeed to the husband's property as long as there is any widow alive and not remarried. Hindu Law does not favour the distribution of a deceased man's estate among his several relatives, as some other systems (like that of the Moslems) do. It gives the whole estate to one heir or one class of heirs to the exclusion of all others. It is greatly to the credit of the ancient Hindu Law that it boldly gave all the separate property of a deceased male to women, viz. to the widow and after her to the daughter in preference to the man's own father or brother or nephew. Attempts are now being made through the Legislature that even when there are sons, the widow and daughters of the deceased should be given shares. Though these efforts spring from the laudable motive of enlarging the rights of women, they do not deserve unqualified encouragement. They will produce friction, cause fragmenta-

¹³⁶¹. तावत्पुत्रव्योक्तसज्जतीया विजर्णीयाश्च तदा यथांशं विभज्य युद्धन्ति । मिता, on वा. II. 135.

tion of lands, make holdings uneconomic and it is extremely doubtful whether they are in the best interests of society or nation as a whole and whether the vast mass of Hindus want them. Prajapati¹³⁶² says that the king should punish as thieves those sapindas and relatives that oppose or obstruct a widow in succeeding to her husband's estate.

The words of the Tai. S. quoted above (p. 606) about women being without strength and not entitled to *dāya* (*adāyādih*) really occur in the ritual of Soma offerings and should mean that women are not allowed to share in the drinking of Soma. But the Baud. Dh. S. (S. B. E. vol. 14 p. 231) appears to have taken them as excluding women from inheritance. Manu IX. 18 also relies on it and declares that the *samśkāras* on women (except marriage) are not to be performed with Vedic mantras, as the Veda declares them to be 'nirindriya' and 'anṛta'. Later writers like Haradatta (on Gaut. 28. 19, Āp. Dh. S. II. 6. 14. 1) and V. P. pp. 517 and 554 base the exclusion of women from inheritance on this passage of the Veda. They say that, though the Vedic text is very sweeping and general, it is meant to exclude only women other than those expressly mentioned in the *smṛtis* as entitled to inherit. For example, the *Dāyabhāga* XI. 6. 11 quotes Baud. and remarks that the wife is entitled to inherit because of special texts (like those of Yāj. and Viṣṇu) in her favour. The Sm. C. II. p. 294¹³⁶³ says that the Vedic passage is only an *arthavāda* (meant for praise) and not an absolute rule and it must be taken as not referring to those women that are expressly mentioned (lit. by being seized by the horn). The V. P. says the same. Aparārka (p. 743) holds that the Vedic passage is merely an *anuvāda* and excludes women only when there is a son. It should be noted that the Par. M. (III. p. 536) holds that the Tai. S. passage merely means that the wife of the sacrificer is not entitled to partake of Soma

1362. तस्मिन्पिडा वाम्बुवाध ये तस्याः परिपन्थिनः । हिंस्युर्धनानि तान्नाजा चौर्यदण्डेन शासयेत् ॥ यज्ञापति q. by स्मृतिच. II. p. 294, वि. वि. p. 151.

1363. यत्तु क्षत्रं चोक्तं तस्माद्विधो निरिन्द्रिया अद्यावादा इति तदपि न ब्रह्म-
मन्वादिवचनवाचकम् । निरिन्द्रियपुत्रसाहचर्यवृत्त्यभुक्तस्त्रीविषयभावमतेः । भवतु वा सर्व-
स्त्रीविषयवाचयति । तथापि द्यावादृत्या शृङ्गमाह्वितपत्न्यादिस्त्रीभूतिरिक्तपिवा अर्धवाद्-
भूतिरिति सर्वं सुस्पष्टम् । स्मृतिच. II. p. 294 । यत्तु तस्मात् स्त्रियो ... अद्यावादा इति भूति-
वचनं तन्मूलकं च 'निरिन्द्रिया ... निर्यामिति स्थितिः । इति मन्त्रवचने तद् ब्रह्ममपि वाम्बु-
शृङ्गमाह्विकया धनग्रहणं नोक्तं तद्विषयमवसेयम् । सौतमनिसाहसरायं ब्रह्मसोपेवमाह । पृ. प.
p. 517 ; यदपि चार्धवाद्ब्रह्मचरं तस्मात् ... अद्यावादाः—इति तदपि यथावाति तर्जनीवम-
वाङ्कत्वादिति पुत्रसद्व्यावृत्तिवार्थेन व्याख्येयम् । अपरार्क p. 743.

taken in the Pāṇivata cup and that 'indriya' means Soma drink.¹³⁶⁴ But Mādhavācārya in his comment on the Tai. S. I. 4. 27 quotes Tai. S. VI. 5. 8. 2 and explains it somewhat differently as meaning that women being without strength do not take the heritage when there are children. It is very remarkable that both the Mīt. and the V. Mayūkha do not at all refer to the Tai. S. or Baud. Dh. S. in speaking of the rights of women to inheritance. It cannot be said that they were unaware of them, but probably they took the Tai. S. text in the sense in which the Par. M. explains it. The result of the reliance on the Tai. S. and on Baud. by most medieval digesta has been that in the whole of India except in the Madras and Bombay provinces only five females are recognized as heirs viz. the widow, the daughter, the mother, the father's mother and paternal grand-father's mother, because they were expressly mentioned as heirs in the smṛtis or early commentaries. This subject will be pursued further a little later on.

The right of the wife to maintenance during her husband's life time has already been dealt with in H. of Dh. II. pp. 568-569. If the wife was guilty of unchastity but repented of her lapse, she was still entitled to be maintained by the husband (vide H. of Dh. II. pp. 571-573). As regards the rights of maintenance of the widows of deceased members of a joint Hindu family there is a good deal of case law which is passed over here. One or two points may be noted. The right of the widows in a joint Hindu family are conditional upon their leading a life of chastity. Male members are often unwilling to maintain widows who are often compelled to go to court. In the 'Selections from Peshwa Daftar', vol. 43, there is an order (letter No. 142) of Rāmāśāstri, the chief justice of the Peshwa's court, calling upon one Bapuji Tambavekar under threat of penalties to restore the ornaments of the widow of his elder brother (that had died only seven days after marriage) and to give her a yearly maintenance of Rs. 125.

Daughters.—Daughters do not inherit as long as any widow of the deceased owner is alive. The daughter also had to

1364. वा च इति—तस्मात्स्वपो ... अद्रायादाः—इति सा पान्वीक्ययहे तत्त्वत्वा अत्रो मातृविवेकपरा । इन्द्रियशब्दस्य 'इन्द्रियं च सोमपीयः' इति सोमे अपीयदर्शनम् । परा. मा. III. p. 536. This explanation of the परा. मा. is noted by the स्व. प्र. p. 517, which adds that the sentence is only meant to extol the importance of the Pāṇivata cup (of Soma). The स्व. नि. p. 459 has almost the same words as those of परा. मा.

struggle hard for recognition as heir just as the widow had. Gaut., Baud. and Vas. omit the daughter as an heir. Āp. Dh. S. II. 6. 143 recognizes the daughter as an optional heir (probably with sapindas). When Manu IX. 130 declares, 'one's son is like one's self and one's daughter is equal to one's son; how can another person take the wealth (of the deceased) when she who is the very self (of the deceased) lives', it appears from the context (IX. 128-129) that it is the *putrikā* (the daughter appointed as a son) that is intended to be referred to therein. Medhātithi, Nārāyaṇa and Kullūka interpret the word 'duhitā' in Manu IX. 130 as applicable to the *putrikā* only. In the Nirukta,¹³⁶⁵ Yaska cites Rg. III. 31. 1 as relied upon by those who support the claims of the daughter to inheritance and also derives the word 'duhitā' in various ways, but from his explanation of Rg. III. 31. 1 it appears that he is referring to the *putrikā*'s right of inheritance. As the usage of appointing a daughter as a son became gradually obsolete, the ordinary daughter came to be recognized by analogy as the heir of a sonless man after the widow. Yaj. and Viṣṇu both recognize the daughter as an heir after the widow. Nār. (dāyabhāga, 50) recognizes¹³⁶⁶ the daughter as an heir after the son on the ground that she continues the lineage (of the deceased father) just like a son. When Nār. (dāyabhāga, 27) speaks of the daughter being entitled to maintenance till marriage, the context shows (as remarked by the Sm. C. II p. 296) that he is referring to the daughter of a person who was re-united at the time of his death. Br. declares¹³⁶⁷ (S. B. E. 33 p. 378 verses 55-56), 'the wife is declared to be the inheritor of the husband's wealth and, in default of her, the daughter; the daughter, like a son, springs from the limbs of a man: how can another man inherit her father's property while she lives?'. Though the words of Yaj., Viṣṇu and Br. were clear enough ancient com-

1365. अपेतां दुहितृदायाद्य उवाचरन्ति । पुत्रदायाद्य इत्येके । शासत्रिदुहितुर्गर्ह्यं मतम् । (अ. ३. ३१. १); मन्त्रादि बोधा सन्तानकर्मणे दुहितः पुत्रभाष्यम् । दुहिता दुहिता इरे दित्ता द्योगधेया । निदक III. 3-4.

1366. पुत्राभावे तु दुहिता तुल्यसन्तानकारणात् । पुत्रश्च दुहिता चोभौ पितुः सन्तानकारकौ ॥ नारद (दायः ५०); या तस्य दुहिता तस्या पित्र्यौलो भरणे मतः । आसंस्कार भजेरेरता धरतो विभुवापतिः ॥ नारद (दायभास 27); रयादेवं यदि नारद्वचनं विमलविषयं स्यात् । संसृष्टविषयं तु तद्विति तस्यैव पुत्रापरप्राप्तौचलया स्पष्टमवगम्यते । स्मृतिच. II. p. 296.

1367. भर्तृधनहारी वस्ती तां विना दुहिता स्मृता । अत्राद्वैतासम्भवति पुत्रश्च दुहिता द्योगम् । तस्मात्पितृधनं तस्यः कार्यं युक्तीति मानकः । बृहस्पति q. by the मिता. on वा. II. 135, स्मृतिच. II. p. 294, ति. र. p. 391.

mentators were not prepared to accept them in their literal sense. Viśvarūpa holds that Yāj. means only the putrikā and employs the plural in order to convey that several daughters may be appointed as sons. The Sm. C. II. p. 295 informs us that the same opinion was held by Dhāreśvara, Devaśvāmin and Devarāta.¹³⁶⁸ The Mit. rightly refutes these views by saying that the word 'duhitarah' in Yāj. cannot refer to 'putrikā', since Yāj. has himself stated the putrikā as equal to the aurasa son (in II. 128), as the putrikā is included among the sons by Vas. and as the widow and the daughters are declared by him as heirs in the absence of all the sons, principal and secondary. Yāj., Viśnu, Br. are silent as to whether any discrimination was made between daughters as heirs. Kat. (926) gives¹³⁶⁹ a preference to the unmarried daughter and the Mit. and the subsequent digests follow Kat. The Dāyabhāga¹³⁷⁰ (XI. 2. 4 p. 175) quotes a prose passage of Parāśara preferring an unmarried daughter as an heir to a married daughter. Among married daughters the Mit., pressing into service a text of Gaut. on succession to stridhana, holds by analogy that among married daughters the indigent (or unprovided for) one is to be preferred to one who is well-placed.¹³⁷¹ Herein the Mit. follows common sense and the natural inclination of a father to feel more concern for a poor daughter. The Dāyabhāga prefers the unmarried daughter to the married daughter as is done by the Mit., but among married daughters Jimūtavāhana, following an author called Dikṣita, prefers one who has had a

1368. एवं सोपपत्तिकीं पत्युभावे दुहितृनामितं सुवता सुवरपानिगैश्च दृष्टिदुनामि धनमिति विधायकं वचनजातं तत्पुत्रिकाविषयमेव न पुनरपुत्रिकादुहितृविषयमिति धारेस्वर-ब्रह्मसंहितासमते स्मृतिरस्याभिज्ञानमिमानोग्मादकल्पितं निरस्तं वेदितव्यम् । स्मृतिच. II. p. 295.

1369. तदभावे तु दुहिता यद्यनृदा नचेतदा । कात्या. p. by मित. on वा II. 135, स्मृतिच. II. p. 295 (reads यद्यनृदापतिविता), मद्. वा. p. 672, परा. ना. III. p. 524.

1370. तच्च प्रथमं कश्यपैका पितृपुत्रादिरणी । यथा वराहसू. । अदुश्चर्य सुवरप कुमारी रिक्तं यज्ञिपादं तदभावे चोदा । ऊदायत् पूर्वोक्तविशेषपरम् । द्वायनाम XI. 2. 4 p. 175. Vide *Jamnabai v. Khimji* 14 Bom. 1. 13 (for preference of unmarried daughter).

1371. तथा मातृद्वितामतिद्वितानो नूनभावे अपतिद्वितैश्च तदभावे पतिद्विता । औपनं दुहितृनामयनामपतिद्वितानां च—इति गोतमवचनस्य पितृपुत्रेण समानत्वात् । मित. on वा II. 135. 'औपनं द्वितानां च' is श्री. 28. 22, यथा means 'given in marriage'. अपतिद्विता means निधेन acc. to the मित., च, मद्. वा. p. 141, च. न. p. 520.

son or who is likely to have a son to a widowed or barren daughter or to one who has given birth only to daughters. This preference is due to the principle of the *Dāyabhāga*¹³⁷² that spiritual benefit is the governing factor in succession. The barren daughter or widowed daughter is unable to confer spiritual benefit on her father since she will have no son that will offer *pindas* to the deceased owner (who will be the maternal grand-father). The *Mit.* on the other hand relies on nearness of blood (*pratyāsatti*) as the guiding principle. But, as pointed out by the V. P. p. 519, the *Dāyabhāga* is inconsistent. There is no reason on its own principle why the unmarried daughter should be preferred to a married daughter who has a son. The latter is then and there capable of conferring spiritual benefit while it is problematical whether the unmarried daughter will confer spiritual benefit (since she may after all be blessed with no son after marriage). *Aparārka* (p. 721) and V. R. (p. 517) give three meanings of the word '*apratisthita*' viz. 'childless, poor, widowed'. In deciding whether a particular married daughter is indigent as compared with another, the Courts refuse¹³⁷³ to go into nice or minute questions of the respective monetary positions of their husbands and prefer one to the other only if there is great disparity or marked difference between their positions.

According to all High Courts in India except that of Bombay a daughter's estate is similar to that of the widow. She takes only a limited interest, can only enjoy the usufruct of the property and cannot alienate it. On her death the estate passes not to her heirs, but to the next heir of her father. In Bombay,¹³⁷⁴ however, the daughter takes an absolute interest

1372. दुहितुशधिकारे सम्मानद्वये हेतुत्वा निश्चितं सम्मानश्च पिण्डदोषिणस्तु, अपि-
पण्डितपात्रावकाशेन अयमस्यानादुसन्नामावकाशविशेषात् । दीहितश्च तपिण्डदाता ... ।
अतः दुश्करी सम्भावितदुष्का चाधिकारिणी । तस्यात्य-विधवात्-दुहितुपुत्रादिना विपर्यस्त-
दुष्का पुनरधिकारिण्येति दीक्षितमतमावुरणीयम् । दायभाग XI. 2. 1-3 p. 175; अ. प्र.
p. 518. quotes this and remarks, तेनैव यद्यस्य कर्तव्यं विदुषनाधिकारिणीत्यनेन द्वये-
नानिधानात् । तदानीं च दुश्करीभावमनिश्चयभावात् । हेतुनिर्देशाय पत्यासहचरिण्येवमात्र-
पक्षेकतयाप्युपपत्तेः । अ. प्र. p. 329.

1373. Vide *Totawa v. Basawa* 33 Bom. 229; *Manhi v. Kundan* 47 All. 403.

1374. See *Bhagatibhai v. Kahnajirao* 11 Bom. 285 (F. B.); *Vithappa v. Savitri* 34 Bom. 510 [daughters take absolute estates in the Bombay Presidency].

in her father's estate when she succeeds as heir and on her death the estate will go to her own heirs.

A daughter is entitled to succeed, according to the decided cases, to her father's estate even if she be unchaste at the time of his death (except in cases governed by the *Dayabhāga*).¹³⁷⁵ The reason assigned is that Kat and other smṛti writers do not expressly mention the requirement of chastity in the case of the daughter or mother as they do as regards the widow. According to the¹³⁷⁶ *Dayabhāga* (XI. 2. 8) Br. declares: 'a daughter equal in caste to the father and married to a husband of the same caste as her own, who is virtuous and intent on serving her husband, inherits her father's property'. Therefore a daughter who is unchaste cannot inherit. Further a daughter succeeds not because she is the daughter, but because she satisfies all conditions laid down by Br. The *Dayabhāga* (XI. 2. 31) further says that the word 'wife' (in XI. 1. 56) is merely illustrative and whatever restrictions are imposed on the wife apply to all women as heirs. The illegitimate daughter, even of a śūdra, has no right of inheritance to her father.¹³⁷⁷

By virtue of local or family custom daughters have in some cases been held to be excluded from inheritance.¹³⁷⁸

It may be noted that in his *Vaijayanṭi* (on Visnu Dh. 8. XVII 5-6) Nandapāṇḍita appears to have preferred a daughter-in-law to a daughter; but he stands practically alone in this. Vide Jolly's T. L. L. p. 199 and p. 286 for quotation which however is not found in the D. C. Ma. No. 69 of the *Vaijayanṭi*. The daughter-in-law is not an heir at all in the whole of India,

1375. Vide *Adivyappa v. Rudra* 4 Bom. 104 (where the original Smṛtis and digests are cited at length and discussed); *Kijiyadu v. Lakshmi* 5 Mad. 149, 156.

1376. तदाह ब्रह्मपतिः । सद्गतीं सद्गतेनोदा भर्तृव्युत्पत्ते रता । कुतस्तुता वा पुत्रस्य पित्र्येनदरी तु सा ... तेति च पूर्ववचनोदात्ता बुद्धिता परावृत्तते । तदेवं सद्गतीं सद्गतेनोदा इत्यादिनिषेधनाञ्च बुद्धितुमावतता विदुषनाधिकारितेति दर्शयति । ... यद्वा पत्नीव्युत्पत्तत्वं श्रीमायाधिकारेऽप्यमर्था बोद्धव्य इति तात्पर्यम् । द्वावभागे XI. 2. 8, 13, 31. Vide *Ramanand v. Rai Kishori* 22 Cal. 347 for the exclusion of the unchaste daughter from inheritance.

1377. Vide *Bhikya v. Babu* 32 Bom. 562 (holds that the illegitimate daughter of a śūdra has no right of inheritance as against the son of the śūdra's brother).

1378. Vide *Rajrangī v. Munokarnika* 55 L. A. p. 1 (daughters held excluded by custom among Hhale Sultan Chhatris from Ondia).

except in Bombay (where she inherits as the widow of a *gotraja sapinda*). The Bālabhaṭṭī criticizes Nandapandita without naming him and holds that a daughter-in-law inherits only as a *gotraja* and not before a daughter.

Raghanandana in his comment on the *Dayabhāga* makes the position about unchaste daughters quite clear¹³²⁹. The *smṛtis* give preference among daughters to an unmarried daughter i. e. to a daughter who is a virgin (*kumārī*). It has been held by the Indian High Courts that though chastity is not required in the case of daughters to entitle them to inherit, yet in a competition between a married daughter and a daughter who was never married, but became a concubine or prostitute, the latter would be postponed to the former as the latter is not a virgin though unmarried. Some *smṛtis* like *Parāśara*¹³³⁰ employ the word *kumārī* in speaking of daughters' succession, while others employ the word '*kanyā*', but both words are synonymous. In *Govind v. Bhiku* 46 Bom. L. R. 699, where a man died leaving as heirs a married daughter and another daughter who never married, but was living as the permanent concubine of another man, it was held that the latter 'cannot inherit the property of her sonless father to the exclusion of or along with his married daughter. The old texts speak of only unmarried daughters and married daughters and prefer the former to the latter. Medhātithi on Manu IX. 132 says that *kanyā* means a girl who has had no sexual intercourse with any man. The Mit. makes three classes of daughters succeed one after another viz. (1) unmarried daughter, (2) indigent married daughter, (3) well-to-do married daughter. Judicial decisions have added a fourth variety viz. unmarried daughter who has become a prostitute. This fourth class being a new one must be placed after the other three classes expressly mentioned by the texts and commentaries on the basis of the maxim (intruders or uninvited persons must be seated at the end of or after those

1329. पत्नीपुत्रलक्षणमिति । अयुष्मन् शपनं गर्तुः ... दायादा उपर्यमाप्नुयुः—इत्यपि कात्यायनश्चनपरश्चनपूर्वार्थं भर्तृर्धनहरी पत्नी वा स्वाध्यापमिच्छारिणी—इति पत्नीपुत्रपुत्रलक्षणे पूर्वार्थ पक्षे तु एकत्र इति शास्त्राद्ये इति न्यायेन पल्पपिकारः, इह तु पत्नीपदेन लक्षणरा इतिपुत्रपौरपि ग्रहणमिति भेदः । रघुनन्दन on दायादा XI. 2. 31. This is quoted in *Trailokya Nath v. Radha* 30 C. L. J. 235 (about mother) at p. 240.

1330. अयुष्यस्य कुमारी रिष्ये युद्धीवासदुभावे चोदा चेति पराशरश्चनानुसारेण कन इति वाक्यः । चि. चि. p. 153 ; the *Bālabhaṭṭī* also quotes *Parāśara* almost in the same words. Vide *Tara v. Krishna* 31 Bom. 495 (where the original authorities about the word '*kanyā*' are exhaustively dealt with).

that are specially invited) noted by Śabara on Jai. V. 2. 19 and X. 5. 1 and by Śaṅkara on Vedāntasūtra IV. 3. 3 and employed by the V. Mayūkha (text p. 143) for settling the place of the paternal grandmother after the brother's son.

The daughter's son (dāuhitṛā). On failure of daughters the daughter's son inherits. Gaut., Āp., Vas., are all silent about the daughter's son and so are Yāj. and Viṣṇu. But it has been plausibly urged by Viśvarūpa that, since¹³⁸¹ Yāj. himself has (in II. 134) stated that the illegitimate son of a śūdra takes the whole estate if there be no legitimate son provided there exists no heir up to the daughter's son, the latter must have been intended to be an heir by Yāj. taking after the daughters. The Madanapārijāta (p. 672) relies on the word 'ca' in Yāj. to bring in the daughter's son. Though the printed text of Viṣṇu Dh. S. is silent about the daughter's son, the Mīl., the Dāyabhāga and others quote a verse of Viṣṇu,¹³⁸² 'when there is no continuance of lineage through sons and son's son the daughter's sons take the wealth (of the deceased owner); in offering śrāddha to the ancestors, daughter's sons are regarded as son's sons'. The V. Mayūkha (p. 142) includes a sūtra about the dauhitṛa in Viṣṇu Dh. S. Govindarāja, a commentator of Manu, is said by the Dāyabhāga, to have held, relying on this verse of Viṣṇu, that the daughter's son inherited the estate even before a married daughter of the deceased. But the Dāyabhāga did not approve of this view. The Dāyabhāga (XI. 2. 27) notes that Bālaśa held that as the daughter's son was not expressly named by Yāj. he came in as an heir after all those that were expressly mentioned as heirs. Baud. Dh. S. II. 2. 17 distinguished¹³⁸³ between the putrikāputra and daughter but it is not clear whether Baud. intended to lay down that the dauhitṛa was an heir. In IX. 131-133 Manu expressly says that the dauhitṛa

1381. अन्तःपुत्रस्तु पुत्रितृतासुताभावे सर्वभाक् स्यादाज्ञातृणां बृहस्पतिवचनोक्त-
अनन्तपितुः सर्वं राजा हरेत्तद्व्युत्पत्त्या वाररोपपन्न इत्येक-इति । अस्मादेव च दक्षिणामात्रवचनस्य
द्विजातीयानामपि पुत्राभावे दक्षिणा धनभाज इति । अत एव च मातामहभाजनियमोपपत्तिः ।
निश्चयः on या. 'अन्तःपुत्रो ... इति'.

1382. तथा पौत्रिद्वाराजेनापि मनुर्दक्षिणोऽनुवर्षादे संसारे दक्षिणा धनमाव्युत्प-
पूर्वेषां तु स्वप्राकारे पौत्रा दक्षिणकाः समतः । एतद्विष्णुवचनपलेनोदातः मानेन दक्षिणरपाधि-
कारो दक्षितः । स चास्मभ्यं न रोचते । द्वायभाग IX. 23-24 p. 181. The *mita* reads
'अनुवर्षावसंग्रहणे' and *मताः* for *समाः*.

1383. अनुवर्षस्य दक्षितरि जातं पुत्रिकापुत्रमभ्यं दक्षिणम् । बौ. ध. सू. II. 2. 17.
The द्वायभाग XI. 2. 21 p. 181 quotes this and remarks, किं च स्मृतिषु दक्षिणपुत्र-
पुत्रिकाजातपरं नियतम् ।

should inherit the entire wealth of a sonless man, that he should offer one pinda to his father and another to the maternal grand-father and that in religious matters there is no difference between a son's son and a daughter's son, since their father and mother (respectively) spring from the body of the deceased owner. The context and the wording of these verses show, as held by Kullūka and other commentators, that the daughter's son here referred to is the son of the appointed daughter. But Manu IX. 136 is somewhat clearer. It says, 'through a son born to a daughter from a husband of the same class, whether she be appointed (as a son) or not, the maternal grand-father becomes one having a son's son; that son should offer pinda and take the wealth of the maternal grandfather'. The Mit. takes the word 'akṛtā' in this verse as referring to the ordinary daughter, while Medhātithi and Kullūka hold that this verse also only refers to the son of the putrikā and that kṛtā means an appointed daughter with regard to whom an express agreement was made with her husband, while akṛtā means one (who is intended mentally to be appointed as a son) about whom there is no such express agreement. Br. (S. B. E. 33 p. 379 verse 58) provides: 'just as (the daughter) gets ownership in her father's property (as an heir), though there may be other relatives, so her son also becomes the owner of his mother's and maternal grand-father's property'.¹³⁸⁴

The daughter's sons inherit *per capita* and not *per stirpes*. Suppose that A has two daughters B and C, that B has three sons and C has two sons, that then both B and C die in A's lifetime; on A's death his estate will be divided into five parts, each daughter's son taking one fifth.

A daughter's son is really a bandhu and a *bhinnagotra sapinda*, but owing to historical causes and the high religious efficacy of the śrāddha offered by him he has been given a very high place among heirs by express texts.

Parents (pitaraḥ). Great divergence prevails among medieval digests on the position of the father and the mother as heirs to their son. Yaj. gives no clue as to which among the parents is to be preferred if both are alive when their son dies. The text of the

1384. यथा पितृपुत्रे स्तारुते तस्याः सात्यपि बन्धुः । तथैव मातृपुत्रीये मातृमाताम्भे
पुत्रे ॥ बृह. q. by द्वापभाषा XI. 2. 17. p. 180, एव. प. p. 521.

Manu Dh.¹³⁸⁵ S. as read by most digests places the father before the mother. Manu IX. 217 states that when the son dies issueless the mother takes his wealth, while Manu IX. 185 provides that the father takes the wealth of a sonless man and the brothers also. So Manu is not definite about the preference among parents. Kāt. (927) observes,¹³⁸⁶ 'of a sonless man (the heirs) are declared to be the wife of good family, the daughters, the father on failure of them, the mother, the brother and (the brother's) sons'. Br. (S. B. E. 33 p. 379 v. 63) says,¹³⁸⁷ 'when a son dies without leaving his own wife or male issue, his mother is to be considered as her son's heir or a brother may succeed with the consent of the mother'. In this conflict it may be stated that the Mit., the Madanapārijāta, S. V. (p. 416), the V. C., the V. P. prefer the mother to the father; while the Dāyabhāga, the Sm. C., the Madanaratna, the V. Mayākha prefer the father to the mother. Śrīkara¹³⁸⁸ held that both parents, if alive, succeed together. But the Dāyabhāga, Sm. C.

1385. The विष्णुधर्मसूत्र 17. 4-16 read: अयुवधनं पत्न्यभिगामि । तदभावे पुत्रितु-
नामि । तदभावे पितुगामि । तदभावे मातुगामि । तदभावे भ्रातृगामि ।
तदभावे बन्धुगामि । तदभावे सकुलपगामि । तदभावे सहाभ्यापगामि । तदभावे जाड्यपध-
नं राजगामि । जाड्यपार्थो जाड्यपानाम् । धानपस्यधनमाचार्यो दृष्टीपाच्छिद्यो वा । These
passages are cited as बृहद्विष्णु in the स्मृतिच., मदनरत्न (folio 100 b), च्च. न.
and some other digests and as बृहद्विष्णु by the मित्ता, the परा. मा., व्यवहारसार
(p. 232). The च्च. मयूख p. 142 and मदनरत्न add तदभावे दौहित्रगामि after
पुत्रितुनामि. The वि. र. p. 593 and वि. च्च. p. 151 reverse the order and read
तदभावे मातुगामि तदभावे पितुगामि. But the च्च. न. p. 524 notes that such an order
is found in no other work and so must be taken to be a mistake. Even the
printed मित्ता. reads पितुगामि first. तस्यास्मृतिचन्द्रिका-मदनरत्नकार-कल्पवृक्ष-रत्ना-
कर-पारिजातकारपञ्चानां सङ्गो पितुरभावे मातुः पुत्रधनाधिकार इत्येव सिद्धान्तः । वाच-
स्पतिना तु तदभावे मातुगामि तदभावे पितुगामि—इति बृहद्विष्णुवचने पठित्वा यथामित्ताकर-
मेव सिद्धान्तितम् । तत्तु कुत्रापि तदुक्तिरिदमर्थे तथा पाठरचालित्वनाह धान्वित्तिलमितमेव ।
च्च. न. p. 524. It is, however, to be noted that in the printed वि. र. (p. 593)
the father is placed after the mother (मातुरभावे पितुर्दानामधिकारस्य स्थितत्वात्).
So it is probable that the text of the वि. र. was tampered with after the
time of मित्रमिश्र.

1386. अयुवराय कुलजा पत्नी पुत्रितरोपि वा । तदभावे पिता माता भ्राता पुत्राश्च
कीर्तिताः ॥ कात्या. q. by मित्ता. on वा. II. 133 (reads चार्ककुलजा), स्मृतिच. II.
p. 299, परा. मा. III. p. 526, च्च. मयूख p. 141.

1387. भार्यासुवर्गिणीस्य जनपत्यं सुतरप तु । माता रिक्ताहरी ज्ञेया भ्राता वा तदनु-
ज्ञया ॥ बृह. q. by अपराक्ष p. 744, स्मृतिच. II. 299, व्यवहार XI. 3. 2 p. 186.

1388. अत एव श्रीकृतेण मित्रोविमज्ज धनमहमसुक्तं तदप्ययुक्तम् । पिता हरेद्वपुश्चरप
रिक्ते, स्वर्गोत्तरप अयुवराय माता द्वापनवाप्युपात्त इत्येताभ्यां कीर्तिष्वप्योक्तिरपेक्षसाधनम्-
वक्षिरपेक्षरामित्यतीतिः । स्मृतिच. II. p. 297.

and others criticise this view. The reasons why the Mit. prefers the mother before the father are three, out of which two are based on grammar. The word 'pitarau' in Yāj. is what is called an 'ekāśeṣa' dvandva compound and in dissolving it or in the full-fledged dvandva the mother comes first in order and hence she should be preferred. Another reason is:¹³⁸⁹ A father may have several wives and sons from them all, so that a mother is directly related to her own son only and not to the other sons of her husband. So (the Mit. says) the mother has greater nearness (pratyāsatti) to her son than the father has. The Sm. C. (II. p. 297) refers to Jai. V. 1. 14 where the Vedic sentence 'sārasvatau bhavataḥ' is interpreted and it is stated that the first oblation is offered to Sarasvatī because the Yājñā and Anuvākya verses as first set out are meant for Sarasvatī (and not on the ground of the method in which the *ekāśeṣa* is dissolved); therefore as to *pitarau* also no reliance should be placed on the dissolution of the compound. Nīlakantha in the V. Mayūkha denies the assumptions based upon grammar, says that Pāṇ. does not direct that in dissolving the compound the word *mātā* must be employed first and there is no authority for doing so.¹³⁹⁰ But the V. P. says that though Pāṇini may

1389. पिता सपत्नीपुत्रेष्वपि साधारणः । माता तु न साधारणीति मत्वा सपत्नी-
शपोरसीति नियतमसदृशमिदं न हि जननीजनकयोर्जैवं एतौ सन्निकर्षेतास्तस्यमिति ।
स्मृतिच. II. p. 297.

1390. The general rule is that several words that would be in the same case when separately used may be compounded together to form a *dvandva*, when they are employed to convey the sense of 'ca', as said in 'cūṛiḥ dvandvay' (Pāṇ. II. 2. 29). Such a compound is called *dvandva* and *mātā-pitarau* is an example of it. Another sūtra (I. 2. 64) of Pāṇini states that when words denoting several individuals of the same kind are to be compounded together, only one of them may be retained and that is called an *ekāśeṣa* compound, which is of two kinds, *sarūpa* (e. g. *hamsasca hamsasca hamsau*) and *virūpa* (when the two words are of different genders). The latter kind of *ekāśeṣa* is of restricted use. In such a compound when a male and female are associated together only the word in the masculine gender remains or the word 'pitṛ' when compounded with *mātṛ* (vide Pāṇ. I. 2. 67 and I. 2. 70). Therefore we have two forms to denote the idea of parents viz. *mātāpitarau* or *pitarau*. In dissolving this compound (*pitarau*) we employ the phraseology 'mātā ca pitṛ ca' and in the word 'mātāpitarau' the word for mother comes first. Therefore among parents as heirs mother should come first. Vide pp. 242-244 of my notes to the V. Mayūkha (ed. of text) where both the Mit. passage and its criticism by the V. Mayūkha are explained at length. In *Baṅkriṣṇa v. Lakṣmīn* 14 Bom. 605 both the Mit. and Mayūkha's criticism thereof are set out (pp. 608-609).

contain no such direction, all grammatical works like the *Kaśika* dissolve the compound as 'mātā ca pitā ca' and grammatical usage for centuries supports the argument that the word *mātā* comes first¹³⁹¹. The argument about the mother being nearer is quite specious. Looked at from the son (whose inheritance is in question), the mother and father are both equally proximate. The V. P. holds that according to the maxim that even a slight ground of difference leads one to determine (priority) the mother should be preferred to the father (since we dissolve the compound as *mātā ca pitā ca*). The V. P. (p. 525) further tries to get over the text of *Viṣṇu* (putting the father before the mother) by explaining that if the mother is most worthy as a *pativrata* and the father an ordinary man she should be preferred but if the father is more worthy than the mother he should be preferred. Hardly any one supports V. P. and the courts have not followed this. Owing to the difference of opinion among the digests on the question of the preference between parents as heirs, queer results follow. For example, in the province of Bombay itself the father is preferred as an heir to the mother in Gujerat, the island of Bombay and in Northern Konkan (because in these regions the V. *Mayākha* has been held to be of paramount authority), while in the rest of the Bombay Presidency the mother is preferred to the father as an heir. The mother takes a limited interest as an heir which is the same as the interest taken by a widow as heir to her husband. The father would take an absolute interest. The word mother includes an adoptive mother; that is, if an adopted son dies leaving no son, widow, daughter or daughter's son, the adoptive mother would succeed¹³⁹² to him as an heir (and even in preference to the adoptive father in those provinces where the Mit. is the supreme authority). In the case of a *dvyāmugyāyana* adoption, if the son adopted in that form dies leaving only his adoptive mother and natural mother, it has been held that both the mothers take his estate

1391. विप्रहवाक्ये नमसि पूर्वनिपातविषयो नावुशासनसिद्धयर्थमपि आख्यातुमभ्य-
दायसिद्धौल्लेखः । न हि कापि पिता च माता च पितरविति विप्रहवाक्ये । किं तु माता च
पिता च पितरवित्येवंपुत्रादि विप्रहवाक्येऽप्यवसावकर इति न्यायेन तस्यापि विनिगमकता सेम-
बीतन्त्रेणाशयेन तथोक्तः संभवाः । म्य. न. 525.

1392. *Vide Anand v. Hari Suba* 33 Bom. 404 (where, in the case of a simple adopted son, the adoptive mother was preferred to the adoptive father).

as co-heiresses.¹³⁹³ It has further been held that if, after succeeding as adoptive mother to a dvyāmusyāyana son, the adoptive mother again adopts a son, the latter does not deprive the natural mother of the half share taken by her as heir of the deceased dvyāmusyāyana son.

The word 'mother' in the Mit. does not include a step-mother. The latter is not recognised as an heir of her step-son at all in the whole of India (except in Bombay) on account of the rule of the exclusion of women from inheritance¹³⁹⁴ except where texts expressly mention them as heirs and the property would go to the crown instead of to the step-mother, if the latter alone were left, but she would be entitled to maintenance. In Bombay the step-mother would inherit as the widow of a gotraja sapinda, but she is assigned a remote¹³⁹⁵ place among gotraja sapindas. If a widow remarries and then her son by her first husband dies without leaving a child, a widow, a daughter or daughter's son his remarried mother is allowed to inherit to him by the¹³⁹⁶ Bombay High Court, though if she inherited first as a mother and then remarried, she is held by the same court to forfeit the inheritance taken (on account of section 2 of the Hindu Widows' Remarriage Act of 1856).

The mother succeeding to her son takes only a limited estate i. e. she cannot alienate it except for legal necessity. If Vijñāneśvara's definition of stridhana be literally interpreted even property inherited from a son would be stridhana. There is a striking example in E. I. vol. XIV p. 83 (the Śrīraṅgam plates of Mummaḍi Nāyaka in sake 1280) where a mother inheriting a village granted to her son Parāśarabhaṭṭa made a gift of it to the god Rāṅganātha at Śrīraṅgam.

1393. *Basappa v. Gurlingawa* 37 Bom. 74 (which holds that the adoptive mother and natural mother inherit equally). Vide *Kantawa v. Sangangowda* I. L. R. (1942) Bom. 303 for the effect of adoption by the adoptive mother on the estate taken by the natural mother from a dvyāmusyāyana son.

1394. Vide *Rama Nand v. Surgiani* 16 All. 221; *Tahaldai v. Gaya Pershad* 37 Cal. 214; *Seethai v. Nachiar* 37 Mad. 286, all holding that the step-mother does not inherit to her step-son.

1395. Vide *Kesserbai v. Valab* 4 Bom. 185 at p. 208 (for holding that 'step-mother' is not included in the term 'mother' in the Mit., but that she would inherit as the widow of a gotraja sapinda and so as gotraja sapinda herself). In this case numerous authorities are examined at length.

1396. Vide *Basappa v. Rayava* 22 Bom. 91 (F. B.) for remarried mother inheriting to her son (by the first husband) dying after her remarriage.

Brothers (bhātaraḥ) and *brother's sons*. Acc. to both Yaj. and Viṣṇu, on failure of the parents the brothers succeed and on failure of brothers, brother's sons inherit. There were apparently conflicting texts, Śaṅkha, Manu (IX, 185) and others giving the inheritance to the brothers even before the parents. All these are somehow reconciled and almost all digests from the Mit. downwards are agreed that brothers inherit after the parents. But again a conflict of views ensues. The Mit. says that among brothers, those of full blood inherit in preference to half brothers (i. e. sons of the same father but sprung from a different mother). It then says that on failure of both kinds of brothers, the inheritance goes to brother's sons; but even here the sons of full brothers are preferred to sons of half brothers. This view of the Mit. is shared by the Dāyabhāga and almost all eminent writers of digests except the author of the V. Mayūkha. The Mit. prefers the full brother to the half brother on the ground that the full brother has particles of the bodies of both the father and the mother of the deceased, while the half brother has only the particles of the father's body (the mother being different). Therefore the full brother is nearer than the half brother. The Dāyabhāga argues¹³⁹⁷ that the full brother offers pindaś to the same three paternal ancestors and the same three maternal ancestors to whom the deceased was bound to offer pindaś and is to be preferred to the half brother who offers pindaś to the three paternal ancestors of the deceased alone (but not to the maternal ancestors of the deceased). This view of spiritual benefit being the governing principle in preferring the full brother to the half brother is accepted by Aparārka (p. 745).¹³⁹⁸ The reasons of the V. Mayūkha for preferring even the full brother's son to the half brother are: the word 'brothers' principally stands for 'brothers of the whole blood' (*sodara*) and only secondarily for brothers of the half blood. The general rule of Mīmāṃsā¹³⁹⁹ is that the same word is

1397. सापत्न्यं च सोदरान्भृत्यैश्चैवपौत्रैश्चैवपितृभ्यामुत्तमोत्तमात्रिणादिपिण्ड-
व्यपदानुवर्तते जपन्मन्त्रात् । द्वापभाग XI. 3. 12.

1398. संपदानकारक्युक्तानां पित्रादीनां वधनां पौत्रादिदत्ता एव तत्सन्तति-
जोन्मोपि नेषामेवां दत्तादिदत्ता स तस्य मत्पासकः सपिण्डः । तच्च तु सोदरो ज्ञाताऽतिशयेन
मत्पासकः समानसंपदानो दत्तादिदातृत्वात् । अपारार्क p. 745.

1399. मुख्य एव विनियोग्यो मन्त्रो न मौन इति । कुतः उभेवाशङ्क्यत्वात् । शबर
on जे. III. 2. 1. Compare द्वापभाग III. 30 p. 67 [quoted on p. 606 n. 1145]
and न श्लोकस्मिन्पक्षे एकस्मिन्पक्षे एकः शब्दः सङ्गठ्यचरितो बहुभिः संबन्धमानः
क्राचिन्मूल्यः कविश्रीण इत्यप्यपवादोऽशङ्क्यः । वैकल्प्यमङ्गात् । शारीरकभाष्य on
ब्रह्मसूत्र II. 4. 3. Vide 6 Cal. 119, 126 (F. B.) quoted in 41 L. A. 290, 303-4
for this maxim.

not to be understood in the same sentence or rule as used in the primary and also in the secondary sense. Just as the word 'mother' applies only to the natural mother (and not to the step-mother), so *bhrātaraḥ* should not include both full and half brothers. The V. Mayūkha is however wrong. As pointed out by the *Dāyabhāga*, when Yāj. wants to speak of the full brother he employs the words '*śaśara*' (Yāj. II. 138) and when he wants to refer to the half brother he employs the word '*anyadārya*' or '*anyamātṛja*' (Yāj. II. 139). Therefore the word '*bhrātaraḥ*' applies to both full and half brothers in the primary sense. There are other *smṛti* texts such as that of the *Smṛti-saṅgraha* stating that brothers are of two kinds viz. those of full blood and those of half blood.¹⁴⁰⁰

The Sm.¹⁴⁰¹ C. II. 300 refutes the view of some that the word '*bhrātaraḥ*' in Yāj. is an *ekaśeṣa dvandva* compound that it means 'brothers and sisters' according to Pāp. I. 2. 68' (*bhrātr-putran śvastr-duhitṛbhyām*) and that on failure of brothers sisters inherit. The V. Mayūkha¹⁴⁰² also does not accept this interpretation of '*bhrātaraḥ*' advanced by some, since there is no reason why '*bhrātaraḥ*' should be taken as an *ekaśeṣa* of the *cirūpa* kind (which is restricted only to rare cases) and not of the *surūpa* kind. The *Balambhatti* supports the wider interpretation of '*bhrātaraḥ*' and at one time the Bombay High Court was inclined to accept this

1400. सौदर्याः सम्पत्सौदर्यां ज्ञातरो द्विविधा यदि । विद्यमानेष्वसौदर्ये सौदर्या एव भाविनः ॥ संसृष्ट पृ. ७४ स्मृतिच II. p. 300, एव. न. p. 327.

1401. यद्यपि ज्ञानुपुत्रौ स्ववृद्धिदुग्धमिति ज्ञानद्वयस्य द्वयस्य द्वयस्य विरूपैकशेषं कृत्वा वृद्धिदुग्धमनुपुत्रेणैव कर्तुं शक्यते तथापि पुत्रासौ दद्यादा न श्रियः—तस्मात्त्रिव्यो निरिन्द्रिया अद्यादादीः—इति कुतेरिपेतेनेदं निरस्तं पत्नैश्चिदुक्तम् । स्मृतिच II. p. 300. द्वयस्य refers to Āp. Dh. 5. II. 6. 14. 1. *Bhrātaraḥ*, if it means only brothers, would be an *ekaśeṣa* of the *surūpa* kind, but if it means 'brothers and sisters', it will be an *ekaśeṣa* of the *cirūpa* kind. The latter is to be resorted to only where there is a special reason to do so, as in the sentence 'bring two *kukkūṭas*, we shall make a pair of spouses' (and then *kukkūṭau* means a cock and a hen, while ordinarily it would mean 'two cocks'). कारणान्तराद्वद्वि कुक्कुडावापय मिथुनीकरिष्याम इत्येवमादौ विरूपैकशेषावगतिः । स्मृतिच II. p. 300.

1402. किंचित् ज्ञातर द्वयस्य ज्ञानुपुत्रौ स्ववृद्धिदुग्धमितिपुत्रज्ञानमाद् ज्ञातरश्च स्वमा-रश्च ज्ञातर इति विरूपैकशेषेण ज्ञातभावे भगिन्य इत्याहुस्तत् । विरूपैकशेषे माताभावात् । एव. मयूख p. 142; ज्ञानुपुत्रौ इत्येकशेषेण यावत्कनिद्यान्तरिणा पूर्वं ज्ञाता तदभावे स्वमा । बालम्भट्टी ७७ स्पष्टावर p. 209.

interpretation.¹⁴⁰³ The above shows that some at least of the medieval and later Hindu jurists were more sympathetic and well disposed to the enlargement of the rights of women, though their views failed to secure general acceptance. It has been held that brothers by the same father (though by different mothers) are preferred to brothers by the same mother (though by different fathers), it being pointed out that "there is no provision in the *Mitākṣarā* or elsewhere for the sons born of the same mother after her remarriage being treated as brothers of the same womb for the purpose of inheritance so as to be included in the meaning of the word 'bhrātaraḥ' used in the texts."¹⁴⁰⁴ But Nandapandita expressly provides in his *Vaijayanṭi* the following order of succession among brothers and sisters of the whole and of the half blood: (1) brothers of the whole blood, (2) sisters of the whole blood, (3) brothers who are sons of the same father, (4) brothers who are sons of the same mother (vide Jolly T. L. L. pp. 208 and 287). Because Manu IX. 217 says that the wealth of a childless man is taken by the mother and that if the mother be dead, the father's mother would take it, the Sm. C. II. p. 299 places the paternal grand-mother before the brothers, but it stands almost alone in this and the *Mit.* observes¹⁴⁰⁵ that Manu does not lay down the order but only provides that the paternal grand-mother is an heir capable of inheriting. The V. P. (p. 527) expresses its dissatisfaction with this method of the *Mit.* whereby only Yāj. and Viṣṇu are deemed to lay down the order in which heirs

1403. *Sakharām v. Situbai* 3 Bom. 353 at p. 359-368 (where the *Mayākha*, Nandapandita and *Hālabhāṭṭi* on the interpretation of 'brothers' in Yāj. are referred to); but vide *Mulji v. Carsandas* 24 Bom. 563 and *Bhagwan v. Warubai* 32 Bom. 300 for the proposition that the interpretation of the *Hālabhāṭṭi* has not been accepted by the courts as authoritative so far as the districts governed by the *Mit.* are concerned.

1404. Vide *Ehobā v. Kashiram* 46 Bom. 716 at p. 718. In *Narayan v. Laxman* 31 Bom. 784 it was held that the sister of a prostitute is entitled to succeed to the prostitute's property as a sapinda before the property goes to the Crown by escheat, relying (at p. 793) on the analogy afforded by a passage from the *Vaijayanṭi* of Nandapandita on the *Viṣṇudharmasūtra* quoted in Dr. Jolly's T. L. L. on 'Partition &c.' pp. 208 and 287. तत्र प्रथमे समानमातापितृका ज्ञातरो वृद्धीयुः । ... तद्वन्मते समानमातापितृका भविष्यो वृद्धीयुः । तद्वन्मते तु तेपि (निष्कान्द्राः) वृद्धीयुः । ... तत्रापि प्रथमे समानपितृकाः पश्चात्समानमातृका बीजस्य पादभ्यामपरपाससेष्व ज्ञाननिपातकत्वात् । बीजवन्मते ।

1405. पितृमाता चनं हरेदित्यस्य वचनस्य धनग्रहणाधिकारमात्रपरत्वात्तुल्यं तत्सुतानन्तरं पितामही वृद्धातीत्यविरोधः । *मिता.* ७७ वा. II. 135.

take, while Manu, Śaṅkha and others are deemed to be only concerned with declaring the right of certain persons to inherit.

The V. Mayūkha proposes a special order of inheritance as follows:—(1) full brothers; (2) then full brother's sons; (3) the gotraja sapindas of whom the first is the paternal grandmother, (4) then the sister, (5) then the paternal grandfather and the half brother at the same time, (6) then the paternal great-grandfather, paternal uncle and the half brother's son together. It should be noted that this conjoint inheritance by heirs of different degrees of ascent and descent which is peculiar to the Mayūkha has been regarded by the Bombay High Court as unknown in practice and obsolete.¹⁴⁰⁶ Therefore it is probable that even in districts governed by the Mayūkha the order of heirs after the paternal grandmother and full sister would be half brother, then half sister and then half brother's son and then it will be the same both according to the Mit. and the Mayūkha.

The Mit. does not expressly mention the sister at all but the Bombay High Court has held her to be a very near heir even where the Mit. is paramount, placing her after the brothers (whether full or half), brother's sons (whether of the whole blood or half blood) and paternal grandmother, the difference from the Mayūkha being that under the latter the full sister comes only after the full brothers and full brother's sons and paternal grandmother and before half brothers and half brother's sons.

One passage of the Mayūkha, being wrongly translated by Borradaile, has led the courts (including the P. C.) to decide that full brothers succeed along with the sons of a deceased full brother wherever the Mayūkha is supreme. The passage of the Mayūkha as translated by Borradaile (*vide* Stokes H. L. Books p. 88, IV. 8. 17) runs "the sons of a brother also, if themselves fatherless, at the time of the paternal uncle's death; provided they are capable of understanding (the use of) property, will divide the father's share with their father's other brothers, after the example 'among grandsons by different fathers, the allotment of shares is according to the fathers'".

^{1406.} *Vide Sakharan v. Sitabai* 3 Bom. 353 at p. 363; *Kesserbai v. Valab* 4 Bom. 188 at p. 208.

The text of the Mayūkha is given in the note below. It is¹⁴⁰⁷ almost the same as a passage of the Mitākṣarā, which has not been misunderstood. Both passages contemplate a case like this. A dies leaving B, C, D, his brothers, as his nearest heirs, so that A's estate vests in interest in B, C, D. Before the estate of A is actually divided by metes and bounds, B dies leaving three sons E, F, G. The last three had no right to the property of A at their uncle A's death because their father B was living at the time (i. e. *pitṛyjanurāgākāle jīvalpitrakāhyā asajjāta-dharmasambandhāḥ*). Yet when the property is later on actually to be divided they (E, F, G) will take the share which their father B would have taken if the property of A had been divided at the moment of A's death. Here a distinction is drawn between vesting of property (*dharmasambandha*) and its actual partition. But, in order to entitle nephews to take by actual partition, their father should have survived the deceased. This is the real meaning.

The Privy¹⁴⁰⁸ Council, following a wrong translation, held that, under the law of the V. Mayūkha, brothers and the sons

1407. आनुपूर्वा अपि पितृव्यनरणकाले जीवत्पितृकृतत्वात् आतपनसम्बन्धश्चेत्-अनेक-विधुक्तार्ता तु पितृवो भागकल्पना-इति ग्रापेन पिदपमर्शं पितृव्यान्तरं सह विमज्ज सुहृद्गुः । एष, मधुख p. 142 ; it appears that Borradaile read «रणकाले जीवत्पितृकृतत्वा and misunderstood असम्बन्धसम्बन्धो. Compare मिता. 'यदा त्वपुत्रे भ्रातरि स्वपति तद्भातृव्यामविशेषेण धनसम्बन्धे जाते आतुषनविभागाभावेन यत्किञ्चिद् भाता सुवत्तत्वा तदुक्तार्ता पितृवोधिकारे यते तेषां आतृणां च विमज्ज धनग्रहणे पितृवो भागकल्पनेति युक्तम्' । Vide एष. न. p. 328 for a passage similar to the Mit. The मधुखस (folio 101 a) and मधु. पा. p. 672 have also a similar passage.

1408. Vide *Chandika v. Muna* L. R. 29 I. A. 70 where this rule was applied to Abhan Thakurs that had migrated from Gujerat to the United Provinces of Agra and Oudh before the V. Mayūkha was composed, on the ground that the Mayūkha only embodied and defined pre-existing customs. There was thus a double error. The Mayūkha was misunderstood and further the Mayūkha had nothing to do with Gujerat usages as it was composed by a Mahārāṣṭra brāhmaṇa whose family had migrated to Benares. It may be true to some extent as a general proposition that commentators and digest writers embody pre-existing customs of the districts where they wrote. But often times this is not so and varying statements of the law are due to individual opinions. For example, the Mayūkha provides for the simultaneous succession of the paternal great-grandfather, the paternal uncle and the half brother's son ; but the Bombay High Court has discarded this view of the Mayūkha. The Mayūkha places the father before the mother as an heir, but V. T. composed by Nīlakaṇṭha's own first cousin

of a brother that died *before* the propositus (the brother inheritance to whom is in question) shared the estate of the latter. This erroneous decision has been persisted in to this day on the principle of *stare decisis*. The view of the Vaijayanti about the sons of the same woman from different husbands being sapindas of each other has already been noted (p. 727). Govindarāja on Manu III. 11 says that it is wellknown that children of different fathers but of the same mother are spoken of as brother and sister. Kullūka on Manu III. 11 refers to this view of Govindarāja.¹⁴⁰⁹

A question arises whether the distinction between full blood and half blood made by the Mit. in the case of brothers and nephews was to be carried beyond them. Though a Full Bench¹⁴¹⁰ of the Bombay High Court held that the distinction was not to be carried beyond brothers and nephews and that paternal uncles of the half blood inherited along with paternal uncles of the full blood, the Privy Council overruled this decision and held that the preference of the whole blood to the half blood extends to all sapindas of the same degree from the common ancestor (and therefore a paternal uncle of the whole blood excludes one of the half blood). The Madanpārijāta¹⁴¹¹ p. 674 expressly extends the preference of the whole blood to paternal uncles.

(Continued from the last page)

places the mother before the father (folios 139-140). Following this case it was held in *Haridas v. Ranchordas* 5 Bom. L. R. 516 that the son of a predeceased brother inherited along with the brothers of the deceased. This rule is not to be carried beyond brothers and brothers' sons. In *Kesarial v. Jagubhai* 49 Bom. 282 the differing translations of the Mayūkha were referred to (at p. 286), it was held that the principle of *stare decisis* required that the Privy Council decision should be followed and the estate of a deceased brother was allowed to devolve on the sons of a brother that had died *before* the deceased along with the surviving brother.

1409. निरूपितकथंरत्नेकमातृकपोर्भातृत्वमसिद्धेः । गोविन्दराज ०० मनु III. 11.

1410. Vide *Shankar v. Kashinath* 51 Bom. 194 (F. B.), where the relevant texts are discussed, overruled in *Mahant Garuddas v. Mahant Laldas* L. R. 60 I. A. 189.

1411. पितृभावे आधुनामिव यितान्मदस्याभावे पितृप्यास्तथापि सौदृशमिहोदृश्यमवस्था पूर्वमेव । साक्षात्पितामहीदृष्टाः प्रथमे जनमानसतद्भावे सापेक्षपितामहीदृष्टाः । मनु. पा. p. 674.

It is noteworthy that the *Vīramitrodaya* which generally follows the *Mit.* invokes the principle of spiritual benefit in preferring the full brother's son to the half brother's son.¹⁴¹²

The heirs from the wife to the brother's sons are spoken of as 'baddhakrama' (lit. whose order is fixed) in the *Mit.*, the *V. Mayūkha* (p. 143) and other works and as 'the compact series (of heirs)' in the case law. For example, in rejecting the view of some that rely on *Manu* IX. 217 that the father's mother succeeds immediately after the mother, it is said that the heirs from the parents to the brother's son being mentioned in a fixed order (by *Yāj.*), no place can be found for the father's mother in the fixed series of heirs and that *Manu* IX. 187 indicates only this that the father's mother is an heir.¹⁴¹³ The *V. Mayūkha* relies on the popular maxim that when certain persons are specially invited for a meeting or a dinner they are seated on seats definitely allotted to them but that those who come uninvited are assigned places at the end of the row of those who were specially invited.¹⁴¹⁴

The question arises whether the brother's son's son inherits immediately after the brother's son and before any other heir. There is a conflict among Sanskrit writers on this point. The *Sm. C.* II. p. 300,¹⁴¹⁵ the *Subodhini*, the *Madanaparījata* (p. 673) say that the compact series ends with the brother's son, while *Aparārka*, *Varadarāja* (*V. Nir.* p. 453) and the *Vaijayanti* of *Nandapāṇḍita* hold that the brother's son's son comes immediate-

1412. पुत्रं चैतत् । असौदरभ्रातृपुत्रो हि धर्मिनो मातरं विहाय स्वपितामहीविशिष्टस्य धर्मापि पिण्डे वृद्धातीति सौदरभ्रातृपुत्राज्जप्यस्तद्वन्तरमेवाधिकारीति । *स्म.* व. p. 528.

1413. मातर्पति च वृत्तायां पितुर्माता धने हरेदिति माचनन्तरं पितामह्या धनग्रहणे णो पितादीनां भ्रातृसुतपर्यन्तानां बन्धुकमत्वेन मध्येऽनुपवेशभावात् । *मिता.* on वा. II. 135; यद्यपीदं (पितामही) मातुरन्तरं सुता तथापि बन्धुकमभ्रातृपुत्रान्तेषु मध्ये निवेशा-योगादामनुत्तमान्ते निवेश इतिवद् भ्रातृपुत्रान्ते निवेशः । *स्म.* मयूख p. 143.

1414. For आगन्तुनामन्ते निवेशः, vide *शबर* on *जै.* X. 5. 1 'यथा समानेषु समानेषु च ये आगन्तवो भवन्ति ते पूर्वोपपिधानतुल्यमुख्ये निवेशान्ते एवमिहापि ब्रह्मपदः' . Vide also *शबर* on *जै.* V. 3. 19. *शारीरकभाष्य* on *वेदान्तसूत्र* IV. 3. 3 and *भामती* 'आगन्तुनां निवेशान्ते स्थानाभावात् प्रसाधितः' . In *Mohandas v. Krishnabai* 5 Bom. 397 this maxim is quoted and it is said that it applies only to the compact series of heirs and that it does not apply to the list of *bandhus* enumerated by *Nīlakaṇṭha* (p. 602). The maxim is also relied on in *Govind Bhaushet v. Bhiku* 46 Bom. L. R. 599.

1415. गोत्रजा इति धनमात्र इति शेषः । गोत्रजशब्दोऽयं गोत्रजीवद्वन्धावात् पूर्वाङ्क-पितृभ्रातृपुत्रसुतपरिचितपितामहसुतादियोजनेषु वर्तते । *Sm. C.* II. p. 300; vide *V. P.* p. 529 for almost the same words.

ly after the brother's son. A Full Bench of the¹⁴¹⁶ Bombay High Court holds, basing its decision on the usage of the province, that the compact series ends with the brother's son, while the Privy Council would seem to lend colour to the view that in the Benares school it ends with the brother's son's son. The *Dayabhāga* (XI. 6. 6 p. 208) places the brother's son's son immediately after the brother's son on the ground of the superior efficacy of the *pindas* offered by him.

Gotrajas (lit. 'those born in the same gotra' or agnates). Yāj. says that on failure of the heirs up to brother's sons the *gotrajas* succeed. Though one's father, brothers and brother's sons also are really *gotrajas*, they are expressly assigned certain fixed places in the order of heirs and other persons born in the gotra are included in the term *gotrajas* on the analogy of such an example as 'let the cattle be brought and also the bulls' where the bulls, though really included under 'cattle' (*gūṇh*), are separately mentioned in order to emphasize that special attention must be paid to them on account of their intractable nature. Vide p. 526 note 966 above. Acc. to the Mit. *gotrajas* are the father's mother (as the first among them), then other *sapindas* and *samānodakas*. The V. *Mayūkha* (p. 143) also says the same thing and places the father's mother as the first among *gotraja sapindas*. It may be remarked that Yāj. avoids the word *sapinda* and employs the word *gotraja*. The Mit. and *Mayūkha* state that *sapindas* succeed as heirs and that *sapindas* are of two kinds, viz. *gotrajas* (born in or having the same gotra as the *propositus*) and those that are born in (or are of) a different gotra. These latter (viz. *bhānugotra sapindas*) are designated as *bandhus* by Yāj. Therefore it comes to this that, though Yāj. does not employ the word *sapinda*, the inheritance goes after the brother's son to the nearest *sapinda*. Yāj. knew the word 'sapinda' (I. 52) and defines the limits of *sapinda* relationship for marriage (in I. 53), from which it follows that he does not use the word *sapinda* in the sense given to the word by *Jīmūtavāhana*. In I. 68 Yāj. mentions both *sapinda* and *sagotra* (in the matter of *niyoga*) and thereby indicates two things viz. that the words were not synonymous and that *sagotra* had the same sense as *gotraja*.

¹⁴¹⁶ Vide *Appaji v. Mohanlal* 54 Bom 564 (F. B.), in which *Buddha Singh v. Lala Singh* L. R. 42 L. A. 208 was distinguished on the ground that it was not an express decision on the question whether the compact series of heirs ended with the brother's son.

Āp. Dh. S. II. 6. 14. 2 provides¹⁴¹² that 'on failure of sons the nearest *sapinda*' (inherits). *Manu*¹⁴¹³ IX. 187 is the classical text on this point, which appears to mean literally, 'whoever is nearest from among the *sapindas*, to him the estate (of the deceased) shall belong'. This verse has been variously explained by the commentators and digests and variously translated by eminent Judges and writers on Hindu Law. The chief difficulty lies in the expression '*sapindādyaḥ*' and the words '*tasya tasya*'. Some take the first as equal to two words '*sapindāt yaḥ*' and others as one word '*sapindādyaḥ*' (*sapinda* and the like). Some take one '*tasya*' (of him) as referring to the deceased and the other to the inheritor; while others take '*tasya tasya*' as both referring to the inheritor alone, corresponding to '*yaḥ*' (one more '*yaḥ*' being suppressed for the sake of metre). Though the printed text and most of the commentaries read the half verse of *Manu* as in the note below there are several digests that read it differently. For example, the Sm. C. II p. 301 reads it as '*yo yo hyanantaraḥ pindāt*' and quotes Dhāreśvara's explanation that '*pindāt*' means '*sapindāt*'. Kullūka and the *Dayatattva* p. 195 explain '*sapindāt*' as '*sapindamadhyāt*' (from among *sapindas*) and this appears to be the best explanation. Br.¹⁴¹⁹ (S. B. E. 33 p. 379 verse 62)

1412. पृथामाने यः सपिण्डाः सपिण्डः । आप. ध. सू. II. 6. 14. 2.

1413. अग्न्यः सपिण्दाद्यस्तस्य तस्य धने भवेत् । *Manu* IX. 187. Vide Bühler's note on this in S. B. E. vol. 25 pp. 366-368 for the varying interpretations of commentators. Bühler is not right when he emphatically says: "On philological grounds it seems to me improbable that '*anantaraḥ sapindāt*' can mean anything else than 'nearest to the *sapindas*' and that this *sapinda* can be anybody else than the deceased". In the first place the singular '*sapindāt*' can be easily interpreted as used in a generic sense (*jātāveśavacanam*) i. e. as meaning '*sapindābhyah*' (from among *sapindas*). In Āp., Br. and other works wherever inheritance is spoken of, it is the inheritor who is required to be the *sapinda* or *bāndhava* or *sakalya* and the deceased is hardly anywhere spoken of as the *sapinda* of the inheritor but rather as '*mata*', '*svayjāta*', '*dhaṁin*' &c. The verse of *Manu* is variously read. अग्न्यः सपिण्दा पस्तस्य तस्य धने भवेत् । एवम नि. p. 451, मदनमल (folio 100 a) : यो यो ह्यग्न्यः पिण्दादितस्य तस्य धने भवेत् । ... तदेतद् धारेण्यस्य प्यायते यो यो ह्यग्न्यः पिण्दादितस्य पिण्दासपिण्दादित्यर्थो दृश्यः । स्मृतिय. II. 301 ; स्पष्टद्वारसार p. 254 reads as यो यो सः सः स्मृतिय. 'अग्न्यः सपिण्दाद्य इतिहेतुना यः सपिण्दासंनिहितः तस्य सपिण्डसंनिहितस्य धने सपिण्डस्य संनिहितस्य धने भवेदिति निहितत्वात् । सुबोधिनी p. 71.

1419. यथायं ज्ञातयो यव सकुलया आग्न्यवास्तथा । यस्यासक्ततरस्तेषां सोऽनपादधने वरेत् ॥ बृह. १. ४. ४ स्मृतिय. II. p. 301, मदनमल (folio 101 a), वरा. मा. III p. 529, दायमल p. 195, एव. घ. p. 327. The स्मृतिय. and मदनमल explain: ज्ञातयः सपिण्दाः सकुलयाः समानोदकाः । आग्न्यः ... स्मृत्यन्तरे दृशिताः आनपितृव्यश्च; पृथाः ॥

says, 'when there are several *agnates*, *sakulyas* and *bāndhavas* (cognates), whosoever of them is the nearest shall take the wealth of him that dies without issue'.

The important question is: what is the meaning of the word 'sapinda'. The *Mitākṣarā* and the *Dayabhāga* propound two different meanings of the word that have been explained at length in H. of Dh. vol. II, pp. 452-458 and 472-477. Therefore it is not necessary to repeat those explanations. The word 'sapinda' is employed by Pāṇini (IV. 1. 165) in connection with the technical definition of *gotra* (Pāṇ. IV. 1. 162) given by him. It appears to have been used in the sense of blood relationship as stated by the *Kāśīka*. According to the *Mit* the right to inheritance depends upon blood relationship (connection through particles of the same body, *ekakarirūpavānūṣṇa*) and the preference among those who are blood relations is determined by nearness or propinquity (*pratyāśatti*). According to the *Dayabhāga*, sapinda relationship is based on religious efficacy i. e. on the capacity to offer the cake or ball of rice in *śrāddha* and it has evolved a peculiar method of determining preference which will be explained immediately below. That there appears to have been a close connection between taking the wealth of the deceased and offering *śrāddha* to him may be admitted. But the question is whether a person was deemed to be an heir and entitled to take the estate of the deceased because he offered *śrāddha* to that person or whether the heirship was originally determined on other grounds and whoever took the estate was saddled with the responsibility of performing *śrāddhas* for the benefit of the soul of the deceased. It is difficult to give a convincing answer to this. It appears, however, that ancient *sūtras* do not emphasize the religious efficacy of pindas as the determining principle in heirship. *Āp.*, *Manu*, *Bṛ.* (particularly the first and last) speak only of nearness (which more naturally means 'nearness of blood'). *Yāj.* omits the word sapinda altogether in mentioning heirs. *Manu* IX. 142 states that pinda follows the gotra and riktha (wealth). *Viṣṇu* Dh. S. XV. 40 declares, 'whoever inherits the estate (of the deceased) has to offer pinda to him'. This rule is emphasized even by those works (like *V. Mayūkha*)¹⁴²⁰ that make blood relationship

1420. सुतस्य रिषयब्राह्मिणा येन केनापि राजपरोक्षेनैर्वावेदिके दत्तवान्नं कार्यम् । सदा च विष्णुः । यथापहरेत् स पिण्डदायी स्यात्—इति । अ. मद्रस p. 145; यो धन-मादृशीव स तस्मै आद्रे कुशविष्णवे च विदुष्ये वृषात् । स्याति अ. by अथरात्र p. 746, मेरा, ०० मद्र. IX. 132, वि. र. p. 599 and बालम्भडी II. p. 207 (ascribes to बुद्ध-शास्त्रात्प). अथार्थो सुतलोपकारित्वे च तत्परोक्षविधिना पिण्डदानेन स्पष्टम् । अ. n. 504.

the test of heirship by saying that whoever even including the king (who takes by escheat on failure of all heirs) that takes the estate of the deceased must perform or arrange for the performance of the funeral ceremonies of the deceased up to 10 days after death and the *śrāddhas*, as said by the *Brahmapurāṇa* 220. 79 (*tadabhāve ca nṛpatiḥ kṛṣayettvakutumbinām tājātiyair-narair-śūnyak-dāhādyaḥ sakalāḥ kriyāḥ*). The Mit view is upheld by V. R., V. C., Par. M., *Madanapārijāta*, *Sarasvatīvilāsa*, V. *Mayūkha*, *Bālabhāṭṭi* and many other works. The theory of the *Dāyabhāga* is propounded by only a few medieval works and writers like *Aparārka* (quoted above on p. 725), *Raghunandana*, *Nandapandita*. The *Vīramitrodaya* generally follows the Mit, but in certain cases it relies on or refers to the principle of religious efficacy in preferring one heir to another, as for example, in preferring the full brother to the step-brother (compare note 1397 and V. P. p. 528) or in preferring three male descendants to the widow. It is therefore that the Privy Council remark,¹⁴²¹ 'now it is absolutely clear that under the *Mitākṣarā* while the right of inheritance arises from blood relationship or community of blood, in judging of the nearness of blood relationship or propinquity among the gotrajas the test to be applied to discover the preferential heir is the capacity to offer oblations'. Its position is peculiar.¹⁴²² It says that the capacity to offer *pindas* is not the governing principle as to heirship, but it is only useful in finding out the preferential heir among gotrajas.

Viṣṇu quoted by the Mit. (not found in the printed *Dharmasūtra*) prescribes: 'If there be no son or grandson left for continuing the line, the daughter's sons shall take the wealth, for in regard to the obsequies of ancestors daughter's sons are regarded as son's sons'. This is in line with *Manu* IX. 136 (cited above on p. 720) which says that the daughter's son should offer the *pinda* and take the wealth. Therefore it appears that *Manu*, *Viṣṇu* and others relied upon the capacity for the offering of *pinda* as the reason for being entitled as heir, but that this idea was vague and not elaborated in any way. The idea that blood relationship settled the right to inheritance is implicit in the order of heirs in *Yāj. Yāj.* (II. 127) in speaking of the *kṣetraja* son says that he inherits the wealth of both (the

1421. *Vide Buddha Singh v. Lalla Singh* 42 I. A. 208 at p. 227.

1422. तसि पिण्डदानाधिकार एव दाहग्रहणे प्रयोजकः, न्येष्टे सति कर्त्तव्यतामन्तर्धकारेण दाहग्रहणात् । ... गोत्रजादीनां दाहग्रहणान्तर्धकारं सम्भावे पिण्डदानाद्युपकारिणं प्रत्यक्षमिति पक्षद्वयुपकारिण्यवर्तकपरं न तु तदेव प्रयोजकम् । १४. प. 461.

begetter and the husband of the wife on whom he is begotten) and offers pinda to both. He *does not* state that because he offers pinda to both he inherits the wealth. So this verse also favours the view that offering of pinda was a duty laid upon him who took the wealth (except in the case of male issue). Hence it appears that the theory of the Mit. also has a very respectable antiquity and further it has been followed by most medieval writers throughout India (except in Bengal).

The argument of the *Dayabhāga* (which was propounded before it by a writer probably named Udyota¹⁴²³) that the taking of a deceased person's estate depends upon the spiritual benefit conferred on him is briefly as follows. It relies principally on Baud. Dh. 8. and Manu. In the section on the partition of wealth (which begins from IX. 103) Manu (IX. 137) declares the super-eminent spiritual benefits conferred by the son, grandson and great-grandson; further (in IX. 106) Manu states that the son gets all wealth from his father because he frees the latter from debt, that (in IX. 139) the daughter's son also is spoken of as saving the grandfather in the next world and as therefore entitled to the grandfather's wealth, that the verse immediately preceding Manu IX. 187 (declaring that the nearest amongst sapindas inherits) speaks of the offering of pinda to three ancestors; and since it is reasonable to presume that the blind and the like are excluded from inheritance (Manu IX. 201) because they are incapable of performing religious rites, it follows that Manu and others regarded the taking of wealth as dependent on the conferring of spiritual benefit. This point of view the *Dayabhāga* emphasizes at every step. It¹⁴²⁴ says: "There are two purposes for which wealth is acquired, viz. for worldly enjoyment and for the unseen or spiritual benefit derived from making gifts and the like; but when the acquirer is dead, he cannot have enjoyment of the wealth and the only purpose that remains is the unseen purpose or benefit. It is therefore that Br. says, 'from the wealth inherited, the inheritor should carefully set apart half for the benefit of the deceased for defraying the expenses of the

1423. उपकारकत्वेनैव पुनस्तद्वन्धो व्यापणायो मन्वादीनामभिमत इति मन्यते । इति निरवयवविधौद्योतेन द्योतितोऽयमर्थो विद्वद्भिरादर्शनीयः । द्वापनाम XI. 6. 31-32 p. 216.

1424. पुनार्जनेनैव हि ययोजनद्वये भोगार्थं च दानाद्यदृष्टार्थं च । तत्पार्जनं तु पुनः स्वाद्धने भोगपदानावेनादृष्टार्थमेव शिष्टम् । अत एव वृद्धयतिः । समुत्पन्नाश्च पुनः पुनश्च तदर्थं स्थापयेत् पृथक् । मासवाग्यामिनि आदौ वापि च यथेत्यतः । द्वापनाम XI. 6. 11. The meaning of वृद्ध is q. by वि. r. p. 395, चव, नि. p. 447, विवादचन्द्र p. 61.

monthly, six-monthly and annual śrāddhas". The subject of śrāddhas will be dealt with in another volume. But here it is necessary to say a few words for making the position of the Dayabhāga clear. Among the several kinds of śrāddhas two deserve notice, viz. *Ekoddīṣṭa* and *Pārvana*.¹⁴²⁵ The first (*ekoddīṣṭa*) is performed for the benefit of a single deceased person. There are sixteen such śrāddhas performed for the benefit of the deceased during the course of one year after his death or on the 11th day of death. And every year on the anniversary of death an *ekoddīṣṭa* śrāddha may be performed for a deceased person. The *pārvana* śrāddha is performed on certain specified days, such as the *amāvāsya* of a month, or particularly in the dark half or on the *amāvāsya* of Bhādrapada or on a *mūkrānti*. In this śrāddha the three deceased paternal ancestors of the performer are principally invoked and the three deceased paternal ancestors of his mother are also invoked but their invocation is secondary and is dependent on the principal invocation. There is one more word that must be explained here viz. *sapṇḍana* or *sapṇḍikaraṇa*. This is a śrāddha rite performed one year after the death of a person or on the 12th day from his death. By this śrāddha the person recently deceased ceases to be a *preta* (a departed spirit) and is elevated to the rank of *pīṭṛs* (Manes). The widow and daughter can perform only the *ekoddīṣṭa* śrāddha, while sons, grandsons and great-grandsons can perform the *pārvana* śrāddha also. The Dayabhāga refers (XI. 1. 34 p. 162) to the fact that the three male descendants, by performing the *pārvana* śrāddha, confer great spiritual benefit on the owner (compare note 1342 above). Elsewhere (XI. 7. 17 p. 211) it designates the *pārvana* as 'traipuruṣika' (i. e. performed for the benefit of three ancestors). When speaking of the right of the widow to inherit it emphasizes (XI. 1. 43 p. 165), by quoting verses from Vyāsa,¹⁴²⁶ that

1425. 'एकः उद्दिष्टः पश्मिन् आदौ तदेकोद्दिष्टमिति कर्मनामधेयम्.' मिता. on या. I. 251 : एव त्रिपुरुषोद्देशेन पश्मिन्ने तत्पार्वणम् । एकपुरुषोद्देशेन त्रिपुरुषोद्देशेन । मिता. on या. I. 217. पार्वण means 'performed on a *pārvana* day.' Acc. to the विष्णुपुराण III. 11, 118 the *pārvana* days are, अमावास्या, पौर्णिमा, चतुर्विंशी, अष्टमी and दशमिर्नक्षत्रि, भविष्यपुराण १. 18 आहूतम् p. 192 defines the पार्वणभाज्य as 'अमावास्या पश्मिन्ने तत्पार्वणमुदाहृतम् । क्षिपते वा पर्वणि दत्तपार्वणमिति स्मृतिः'.

1426. तदाह व्यासः । सूते भर्तुरे साधुः कीं ब्रह्मचर्यवते निष्ठा । स्मृता पतिदिने दद्यात्समर्थं सतिता जडान् ... लोकाग्रतरर्थं भार्गवाद्यान् च वरानने । तदपत्यमुभयं मारी निरपे धर्मपरायणा । तदेवमादिभिर्वचनैः पत्न्या अपि भरुनिरुत्तरकालक्षुतेः धनहीनतया साक्षात् कुर्वती पुत्र्यापत्यकलसमन्वेन भार्गवमपि प्राप्तवतीति तदर्थं तज्जने पूर्वस्वाम्यधर्मैव प्रवर्तते पुत्रं पत्न्या स्वाम्यम् । द्वापभाग XI. 1. 43-44 p. 165. This is quoted in अ. व. p. 509.

a widow by leading a chaste life, by offering water mixed with sesame every day to her deceased husband, by making gifts and observing fasts saves himself and her husband in the next world. It adds that if the widow misbehaves she makes her husband fall, as husband and wife share in the fruits of each other's good and evil deeds. Therefore the widow takes her husband's wealth for his benefit. *Bṛhan-Manu* (q. by the *Dayabhāga* XI. 1. 7 and by the *Mit.*) declares that a sonless chaste widow should offer *pinda* to her husband and take his entire estate. Similarly *Prajāpati* (cited above on p. 709 and quoted by even the *V. Mayūkha* and other works of the *Mitaksarā* school) requires the widow who inherits all the movable and immovable property of her deceased husband to perform the monthly, six-monthly and annual *śrāddhas* of her husband.¹⁴²⁷ Similarly the *Dayabhāga* allows the unmarried daughter or a married daughter having a son (or who is likely to have a son) to inherit because her son will offer *pinda* to the owner who will be the maternal grand-father. It prefers the daughter's son¹⁴²⁸ as an heir even to the father because the former offers a *pinda* to the owner himself, while the father offers *pindas* to two of the three paternal ancestors to whom the owner would have been bound to offer *pindas*. The *D. B.* winds up by saying¹⁴²⁹ that the order of inheritors must be followed in such a way that the wealth of the deceased may be most beneficial to (the soul of) the deceased. In certain respects the *D. B.* does not strictly and logically follow its own theory but is compelled to twist it by reason of the places assigned by special

1427. On आद्याय द्यायेच्छाजं मासवाग्मासिकादिविकम् [vide n. 1358 above], *नि. १. p. 390* says: केचित्त्रिषा पार्षणमप्याहुस्तस्मिन्मास आद्यानि परिणयन्ति मास-वाग्मासिकादिकमिति । ... आदिशब्देन एकादशसपिण्डनमप्यव्यक्तं पञ्चपादआद्यानि सूच्यन्ते । अतो मासपञ्चुर्मासः ।

1428. पिण्डदानमेव च द्वयेरेकं निमित्तमनुवदति वृत्तस्थितिः । यथा पितृधने स्वाम्यं तस्याः सत्त्ववि चम्बुषु । तथैव तत्सुतोपीष्टि मातृमातामहं धने । यथा येन दौहित्रदेवपिण्डेन दुहित्या पितृधनाधिकारिणी तथैव तेनैव पिण्डदानेन दुहितृसुतोपि मातामहधने स्वामी सत्त्ववि पित्रादिषु । द्वायभाष्य XI. 2. 17 p. 180.

1429. तस्याग्रधया यथा सुतधनस्य तदुपपुत्रत्वं भवति तथा तथाधिकारक्रमेणसुतस्त्रीयाः । ... एवं च सर्वत्रोक्तरीत्या सुतधनस्य सुतार्थवन्तस्यैवसुतक्रमेण । द्वायभाष्य XI. 6. 28 and 30 p. 215. The last sentence is quoted by the द्वायतत्त्व p. 197.

texts to certain heirs.¹⁴³⁰ For example, the order of heirs according to the D. B. is; son, grandson and great grandson; widow; daughter; daughter's son; father; mother; full brother; half brother; full brother's son; half brother's son. But the persons entitled to perform the śrāddha of the deceased in order are somewhat different. In fact the order of succession does not strictly follow in any school the order of those that are called śrāddhādhikārins. The order of those who are entitled to offer śrāddha to a deceased separated male (śrāddhādhikārin) given in most works is as follows; son (aurasa or adopted); grandson; great-grandson; widow; married daughter; unmarried daughter who has succeeded to the deceased's wealth; daughter's son who succeeds to the wealth; full brother; half brother (son of a different mother); full brother's son; half brother's son; father; mother; daughter-in-law; full sister; half sister; full sister's son; half sister's son; paternal uncle; paternal uncle's son; other gotraja sapindas; sodaka; any gotraja; cognates such as maternal grandfather, maternal uncle, maternal uncle's son (i. e. the bandhus of the three kinds in order); pupil; son-in-law; father-in-law; friend; any brāhmaṇa who takes a brāhmaṇa's wealth or king who takes by escheat. Vide Nirṇayasindhu III uttarārḍha pp. 382-386, Dharmasindhu III uttarārḍha pp. 368-369, Śrāddhāviveka p. 48. If the principle of the capacity to offer or of the offering of piṇḍas regulating the right to succeed is to be strictly and logically followed, there is no reason why the mother or the paternal grandmother should succeed immediately after the father or the paternal grandfather respectively. Her recognition in the D. B. school is due to the fact she is expressly mentioned in Manu as an heir. Similarly in the rules about the succession to re-united coparceners, the school of D. B. gives preference to re-united co-parceners and does not apply the theory of spiritual benefit. Further the Dāyatattva says that all that is required is the capacity

1430. Vide Akshaya Chandra v. Haridas 35 Cal. 721 at p. 726 and Nalinaksha v. Rajnikanta 58 Cal. 1392 for the propositions that the doctrine of spiritual benefit cannot be applied consistently in all cases such as the succession of females to males, the succession of samīnodakas &c. and that in cases not contemplated by Jimūtavāhana or his followers in the Bengal school, the principle of propinquity and of natural love and affection should be followed. The Dāyatattva p. 195 after quoting Br. cited above observes that both the superiority of piṇḍas offered and nearness of line are to be considered in inheritance, 'विश्वदत्तसम्पत्प्राप्तयेन आसन्नजनन्तार-हमेन च धनेष्वधिकारी'.

to receive pinda or the capacity to participate in the pindas offered by others and not the actual offering of pindas. For example, if a man performs śrāddha for his ancestors, then dies, but no one performs his sapindana and therefore he does not participate in the pindas given to his ancestors, still his wealth will be inherited on the principle of religious efficacy.¹⁴³¹ Owing to considerations of space it is not possible to go into great detail about the several propositions established in relation to the theory of religious benefit as the determining factor in matters of inheritance. But the following propositions may be set out in one place:

(1) Benefits are conferred on the deceased by means of the *ekoddista* or the *pārvaṇa śrāddha*. The capacity to perform the *pārvaṇa śrāddha* is not the sole ground on which rests the right to inheritance to a man. Therefore the widow, the daughter and the pupil were recognized as heirs though they perform only the *ekoddista śrāddha*. But those who are competent to perform the *pārvaṇa śrāddha* have a preferable claim to those who are entitled to perform only the *ekoddista śrāddha*. Therefore the male issue of a deceased person are preferred to a widow or daughter.

(2) Spiritual benefit is conferred on a man by presenting pinda directly to him or by offering pinda to one or more of his paternal ancestors to whom he presents pindas during his own life time and with whom he participates in pindas offered after his death by others or by offering a pinda to one or more of his maternal ancestors (mother's father, mother's father's father and the latter's father) to whom he was bound to offer pindas during his life (but with whom he does not participate in the pinda offered to them¹⁴³²).

(3) The pinda offered to a man himself directly is of greater efficacy than the pinda offered to a paternal ancestor in which he participates after his own death as one of the Manes. Therefore the son, grandson or great-grandson is preferred to every one else. The brother offers a pinda to the father and two more

1431. अथ यः सन्तु पिण्डान् दत्त्वा स मृतः परलब्धायामपिदुभाः स कथं सपिण्डः, एक-पिण्डदातृत्वभोजनमूलकसम्पत्त्यभावादिनि चेन्नयोग्यतयेति व्रतः । योग्यतामपोजकं च सामान्यसाधनविदत्तम् । अङ्कितम् p. 397.

1432. पञ्च जीवन् सपिण्डदाता स मृतः सपिण्डनात् तत्पिण्डभोक्ता । एवं च सति मरणसिन्धुः पुरतः पूर्वेषां जीवन् पिण्डदाता स मृतः सन् सपिण्डनात् तत्पिण्डभोक्ता च । वाचभाष XI. 1. 38 p. 163, अङ्कितम् p. 396.

paternal ancestors of the deceased in which he (the deceased owner) only participates after his death. Therefore the brother is postponed to the son or daughter's son (who offers a pinda directly to the deceased himself as his maternal grandfather).

(4) The pindas offered to paternal ancestors have greater efficacy than those offered to maternal ancestors (hence a brother's son is preferred to a sister's son because the former offers pindas to his own and the owner's paternal ancestors, while the latter offers pindas to his maternal ancestors who are the paternal ancestors of the owner).

(5) The pinda offered to the owner's father is of greater efficacy than that offered to the paternal grandfather or great-grandfather. Therefore a brother's son or grandson is preferred to a paternal uncle.¹⁴³³ Hence it should follow that all agnatic and cognatic descendants of the father of the deceased would be preferred to any descendant of the paternal grandfather or great-grandfather.

(6) Where the number of pindas offered by two claimants is the same, he who offers a pinda to the nearer ancestor is to be preferred.

The *Dāyabhāga*, starting with Baud. Dh. S. (I 5. 113 ff), *Manu* (IX. 186-187) and the *Matsyapurāṇa* elaborates its own definition in the following¹⁴³⁴ way. A man's son and a daughter are both born in the family. The daughter's son springs from the family of his maternal grandfather but he belongs to another gotra (viz. his own father's gotra); similarly, a man's sister (i.e. father's daughter) is born in his family but her son, though mediate sprung from the deceased owner's family, belongs to another gotra (viz. that of the sister's husband); the same is true of a father's sister's son and the paternal grandfather's sister's son. A sister's son offers a pinda to the father

1433. पितृभ्यो हि धनिः पितृमहयपितानहयोः पिण्डदुः शत्रुः पुत्रस्तु धनिः प्रधानं पितरमेवादाय दृढवद्वरस्य पिण्डदत्तेति स एव बलवन्ति पितृप्राप्तुर्वैमधिक्येते । अत एव शत्रुतापि पितृवस्य बाधकः पुत्रधनिकस्य पितुः प्रधानस्यैव पिण्डदातृत्वात् । द्वाप-
मान XI. 6. 5-6.

1434. तस्माद्यो परतकुलोपज्जोऽप्युद्योपि तदौचित्यपितृवृद्धिवादेरतकुलोपज्जो मातुलादिर्धनितो पुत्रस्य पितृमातृकुलमतैरेवधिकपिण्डदातृत्वा एवपिण्डसम्पन्नत्वेन सपिण्ड तस्य तस्याप्यधिकारार्थं वचायामिति वचनं, आत्मन्तरेण च विशेषार्थमनन्तर इति वचनं वच-
नीयम् । तेन मूलभोग्यपुत्रदेवविवादेऽप्यपिण्डदातृः पितृवृद्धिवादेरभावे पुत्रदेवमातामावि-
पिण्डदातृत्वा मातुलादीनामन्तरेणमेवाधिकारो बोद्धव्यः । द्वापमान XI. 6. 19-20 p. 212.
वचायामुक्तं कार्यं is *Manu* IX. 186 and अनन्तरः सपिण्डाद्यः is *Manu* IX. 187.

of the deceased, as the owner's father is the former's maternal grandfather and therefore he is connected as sapinda with the owner. A father's sister's son offers a pinda to the paternal grandfather of the owner, who (paternal grandfather) is the maternal grandfather of the father's sister's son. A maternal uncle is not sprung even mediately from the family of the owner, but he offers a pinda to his own father who is the maternal grandfather of the deceased owner. Therefore the maternal uncle or his son or son's son being connected with a pinda that is offered to the maternal grandfather or maternal great-grandfather respectively of the deceased owner is a sapinda of the deceased owner. A maternal aunt's son also offers a pinda to his mother's father, who is also the owner's mother's father and so the maternal aunt's son is a sapinda of the owner. The pindas offered to the maternal ancestors by him are inferior and secondary. Further, one's own mother, the father's mother, father's father's mother were associated with their respective husbands as to the pindas offered to the male ancestors and the same holds good about the wives of the maternal ancestors also.¹⁴³⁵

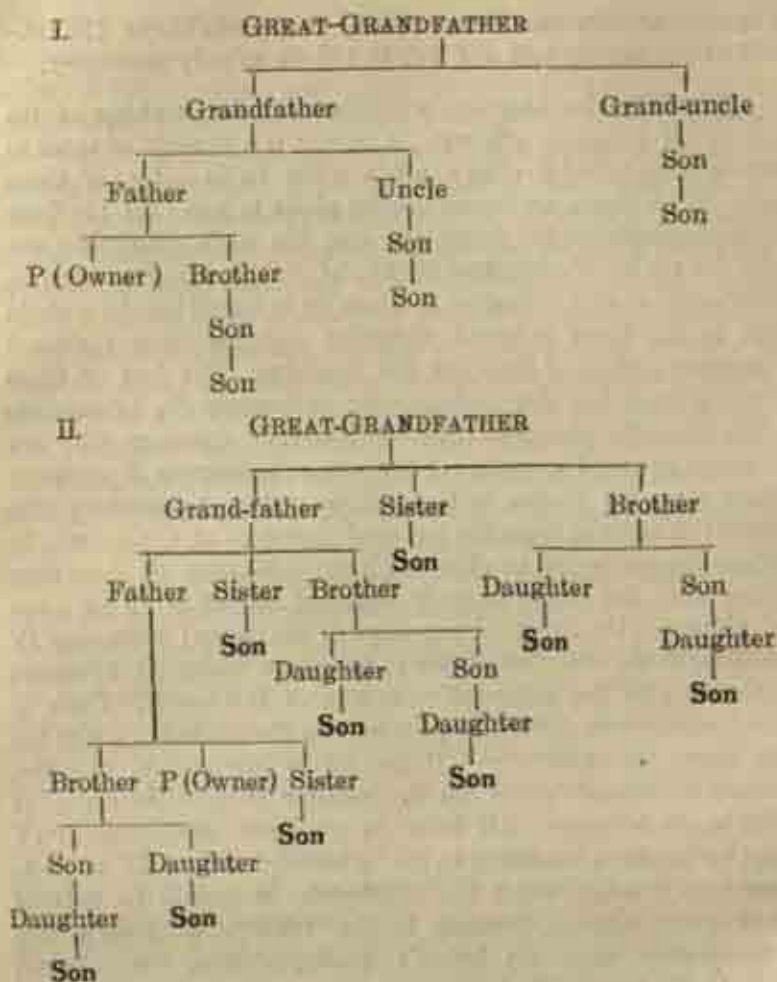
The result of this way of defining a sapinda is to obliterate the distinction between a *gotraja* and a *bandhu*. Yāj. (II, 136) expressly says that a bandhu can succeed only on failure of all gotrajas and so according to him a bandhu is one who is not a gotraja. The Dāyabhāga brings in the sister's son immediately after the brother's son's son and before the paternal grandfather (i. e. even before a near agnatic ancestor) who is literally a *gotraja*, while the sister's son is literally not a *gotraja*. When the Dāyabhāga designates one's sister's son as sprung from the *kula* of the owner though not of the same gotra, he does violence to popular usage prevalent throughout India. An ordinary person in India hardly ever says that his sister's son or father's sister's son is born in his own *kula*. The Dāyabhāga only quibbles over the word 'gotraja' in Yāj. which it reads in the singular (*gotrajaḥ*) and not in the plural (*gotrajāḥ*) as the Mit. does. Under the Mit. the sister's son is only a bandhu and cannot succeed before a paternal uncle or his son or a paternal grand-uncle or any other gotraja. The Dāyabhāga thus gives the go-by to the text of Yāj. and shuffles in several

1435. मातृपितृशब्दानां स्वजननी-पितृजननी-पितामहजननीष्वेव सुतपत्न्यादिष्वेव च पदौ आहोऽनुवर्तमानौ । यथा—स्वेन भर्ता सह आहुं माता सुहृदो स्वधामवत् । पितामही च स्वेनैव स्वेनैव यथिषामासी । सपत्नीमातृपितृनां च पार्श्वभाद्राद्यनुवर्तते निषिद्ध एव । द्वापभाग XI. 6. 3 p. 207.

cognates as very near heirs. The D. B. regards Manu IX. 186-187 as the crucial text and Yāj. II. 135-36 as only secondary.

The following diagrams will illustrate the working of the theory of religious efficacy. A person is a sapinda of those to whom he is bound to offer a pinda while he is alive, of those who on his death are bound to offer pinda to him (viz. his three male descendants, his daughter's son, his son's daughter's son and his son's son's daughter's son) and of those who are bound to offer a pinda to the ancestors to whom he is bound to offer a pinda viz. to his three paternal ancestors and his three maternal ancestors and all of these are his sapindas. The last of these three groups has four sub-groups:—sub-group No. 1 comprises those who offer pindas to their own paternal ancestors who are also the paternal ancestors of the owner: sub-group II contains those who offer pindas to their three maternal ancestors who are all or some of them the paternal ancestors of the owner, to whom he was bound to offer a pinda; sub-group III comprises those who offer pindas to their paternal ancestors all or some of whom are the maternal ancestors of the owner; sub-group IV exhibits those who offer pindas to their own maternal ancestors who are also the maternal ancestors of the owner. Each of these sub-groups contains 9 persons (as the minimum) who are all shown in thick type. If the owner has several brothers, sisters, uncles and aunts &c. the number of possible sapindas will be much larger. All heirs in the three sub-groups II-IV will be bandhus according to the Mītākṣarā and will be postponed to gotrajas under the Mītākṣarā. It should be noticed that Jimūtavāhana brought in the father's daughter's son immediately after the father's great-grandson, the paternal grandfather's daughter's son after the paternal grandfather's great-grandson and the paternal great-grandfather's daughter's son immediately after that ancestor's great-grandson on the analogy of the rights of the owner's daughter's son and on the basis of Manu IX. 139 that the *dauhitro* (daughter's son) saves an ancestor in the next world just as a son's son does.¹⁴³⁶

1436 किं तु पितृरपि यौवपयन्ताभावे पितृदौहित्रस्याधिकारो योज्याः धनिदौहित्ररूपे । एवं पितामहपितामहसन्तरेरपि दौहित्रान्तायाः पिण्डप्राप्तिसिद्धयेणाधिकारो योज्यः । दौहित्रेऽपि बन्धुत्वेन सन्तारयति योजयति इत्येतद्विज्ञेयम् । स्वदौहित्रवत्पितादिदौहित्रस्यापि तद्वन्धुवत्पिण्डदानेन सन्तारकत्वात् । दापभाग XI. 6. 3-9 pp. 208-209. In *Huri Das v. Bama Churn* 15 Cal. 780 at p. 796 these *placita* were considered and it was held that they are not to be extended to the brother's



(Continued from the last page)

daughter's son and that the latter though a sapinda of the owner and an heir was not to be preferred to the great-grand son of the paternal grandfather of the propositus. Sarvadhikari (T. L. L. on inheritance, 2nd ed. of 1922 pp. 701-702) criticizes this decision as wrong, but it does not appear that the Calcutta High Court is prepared to follow him. A similar conflict arises as to several cognate heirs. For example, the son's daughter's son and the son's son's daughter's son offer pinakas to the owner himself directly as a maternal ancestor (just as the daughter's son does) and therefore should be placed immediately after the daughter's son as heirs. But the Calcutta High Court would refuse to do so if the reasoning in 15 Cal. 780 be followed. Sarvadhikari (p. 709) however would place them immediately after the daughter's son.

those that are expressly named as heirs by special texts), since they are not born or (even mediately) sprung from the family of the owner, as the sister's son or the father's sister's son that is held by it to be so sprung, that the word '*bandha*' is employed by Yāj. to include a maternal uncle and the like among heritable sapindas, since they are not sprung even mediately from the *kula* of the owner and are also not of the same gotra, that the maternal uncle and the like come in only after all descendants in the lines of the paternal ancestors inclusive of the great-grandfather up to the latter's daughter's son are exhausted,¹⁴³⁸ and that Manu had not to enter into these details as its two verses (IX. 186-187) were quite enough to lead to all that has been elaborated by the D. B. about the working of the theory of religious efficacy.

It will have been noticed that no female except the five expressly mentioned can inherit under the Dayabhāga scheme and the result is that a man's own son's daughter or daughter's daughter does not take as heir, whereas a distant-relative like the father's father's sister's son takes it. The same is also the case even under the Mitākṣarā in the whole of India (except in Bombay and to some extent in Madras for which see a little later on).

A man offers only the leavings or remnants of the *piṇḍas* that stick to his hand (when offering *piṇḍas* to his three paternal ancestors) and that (leavings) are cast on kuśa grass to three paternal ancestors above the paternal great-grandfather (Manu III. 216). So also the three male descendants beyond the great-grandson offer the leavings (called *piṇḍalepa*) to the owner; these three remote paternal ancestors and the three remote male descendants (spoken of as '*vibhaktadāyāda*' in Baud. Dh. S. I. 5. 114) are designated *sakulya* by Baud., and

1438. Vide *Kaṭṭaka Chandra v. Karuna Nath* 18 C. W. N. 477 where the above passages are considered at length and it is held that the paternal grand-uncle's daughter's son (though not expressly mentioned by the D. B.) is entitled to preference over the maternal uncle (who is expressly mentioned as an heir and a sapinda by D. B.), since the former offers a *piṇḍa* to the paternal great-grandfather of the owner to whom the owner was bound to offer a *piṇḍa* in which the owner participates after his own death, while the latter offers a *piṇḍa* to the maternal grandfather of the owner to whom the owner was bound to offer a *piṇḍa* in which, however, the owner did not participate after his death.

the D. B.¹⁴³⁹ (XI. 1. 38). According to D. B. sakulyas succeed after all sapindas are exhausted. Just as a man participates after his death in the pinda offered to his paternal ancestors so he would participate in the leavings also offered to his paternal ancestors from the 4th to 6th by their descendants (from 4th to 6th). The D. B. remarks that this difference between sapindas and sakulyas is made only in the matter of inheritance. But in the matter of the periods of mourning both the sapindas (strictly so called in the section on inheritance) and the sakulyas are designated sapindas by Manu (V. 60) and by the Mārkaṇḍeya-purāṇa (28. 4).¹⁴⁴⁰ According to Manu IX. 187 sakulyas succeed on failure of sapindas, while Viṣṇu Dh. S. (XVII. 9-11) prescribes¹⁴⁴¹ that on failure of bandhus, sakulyas succeed. It appears that Viṣṇu employs the word bandhu in the sense of sapinda. Nār. (dāyabhāga, 51) states that on failure of daughters and sakulyas, bāndhavas and persons of the same caste succeed. Here it appears that sakulya and bāndhava are employed in the sense of gotraja and bāndhava as done in Yaj. The Bālabhāṭṭi says that gotraja and sakulya are synonymous. The Dāyabhāga appears to be somewhat inconsistent in its references to sakulyas. In XI. 6. 15 and 23 it includes samānodakas among sakulyas, while in XI. 6. 21-22 it defines sakulya as stated above. The Mit. on the other hand comprehends the sakulyas of the D. B. (as defined in XI. 6. 31) under its gotraja sapindas.

1439. विभक्तदायादाय सकुलपानाश्रयते । ... सपिण्णामात्रे सकुलपः । यौ. व. च. I. 2. 114-116; एतेन वृद्धपितामहस्युत्तराक्षयः पूर्वेष्टकृपाः सपिण्येषु च यष्टकृपास्तमाक्षयः पूर्वकाः एकपिण्यमोक्तत्वाभावाद् विभक्तदायादाः सकुलपा इत्युच्यते । द्वापमय XI. 1. 38 p. 163: तत्रापि पतिपण्यवदिरानन्तरं पिण्डलेपद्वारेण तेषामुपकारकत्वात् तदभावे च वृद्धपितामहसमस्तः सुतदेवपिण्डलेपमोमिष्यो वृद्धपितामहादिभ्यः पिण्डदातुवत् । एवंविधसकुलपानाश्रये च समासीदृकाः सकुलपपदेनैवापाना सम्भवाः । द्वापमय XI. 6. 22-23 p. 215.

1440. पिण्डलेपमुक्तव्याप्ये पितामहापितामहात् । यष्टकृपास्तमाक्षयतो यजमानश्च सप्तमः । इत्येवं मुनिभिः प्रोक्तः सम्भवः सामपीदयः * मार्कण्डेयपुराण 28. 4-5 quoted by द्वापमय XI. 1. 41. The अज्ञपुराण (220. 85-86) reads 'लेपसम्पन्नश्चिन्तयन्ने पितामह ... सामपीदयः'.

1441. तदभावे द्यादुष्टमामि । तदभावे वन्धुमामि । तदभावे सकुलपमामि । विष्णुधर्मसूत्र 17. 9-11. This is the reading of अपराक्ष p. 741, वि. र. p. 595. The यौ. व. p. 530 says that in Viṣṇu bandhu and sakulya stand for sapinda and sagotra. Some words like द्वापमय (p. 189), द्वापमय (XI. 1. 5, p. 151), यौ. मयूख p. 142 read 'तदभावे सकुलपमामि तदभावे वन्धुमामि'. तत्र च पितृसन्तानाभावे विनामही पितामहः पितृप्राप्त्युद्वाच्च क्रमेण धनभाजः । पितामहसन्तानाभावे पितामहोपपितामहस्तदुत्तराक्षयश्चैवैवमासप्तमाश्रयान्मोक्षार्थं सपिण्यमा पश्यदृष्टं वेदितव्यम् । मित्रः. ०५ वा. II. 136.

The Mit. states that the gotrajas are the paternal grandmother, the sapindas and samānodakas of the deceased. It then proceeds to say that the paternal grandmother is the first among *gotrajas*, then comes paternal grandfather. It paraphrases the word *gotraja* (born in the gotra) as *samānagotra* (having the same gotra) and then proceeds, 'on failure of the father's line (*śantāna*) the heirs are the paternal grandmother, the paternal grandfather, the paternal uncles and their sons in order: on failure of the paternal grandfather's line the paternal great-grandmother, the paternal great-grandfather, his sons and son's sons inherit. In this manner must be understood the succession of sapindas belonging to the same gotra (as the deceased) up to the 7th degree'. According to the Mit. sapinda relationship extends up to the 7th degree (reckoned from and inclusive of the owner). Therefore the owner's sapindas for purposes of inheritance according to the Mit. are the owner's (1) 6 male descendants in the male line, (2) 6 male ascendants in the male line and the wives of the first three of them (that are expressly so declared, viz. mother, paternal grandmother and paternal great-grandmother) and probably the wives of the next three also; (3) the six male descendants of each of his six male ascendants in the collateral male lines. Besides, a man's wife and daughter are treated as his sapindas and the daughter's son, though a *bhinnagotra sapinda*, is placed high among the *gotraja sapinda* heirs.

Even under the Mitākṣarā in the whole of India (except in the Bombay and Madras schools), no women succeed as *gotraja sapindas* (except five expressly named and cited above on p. 713). In Bombay the sister (full or half) is brought in as a *gotraja* by the V. Mayūkha (though the Mitākṣarā is entirely silent) and placed by it immediately after the paternal grandmother. It relies on the general words of Manu IX. 187 and of Br. (quoted above on p. 733) that to the nearest person in blood the inheritance goes and then proceeds:¹⁴² 'She is also a *gotraja* as being born in the gotra in which her brother (the deceased owner) was born. She is, however, not a *sagotra* (of the deceased brother), but being a *sagotra* is not mentioned here (in Yaj.) as the condition that leads on to the taking of the wealth of the deceased'. Here the V. Mayūkha plays upon the word *gotraja* and takes its literal meaning. But that is a specious argument. The

¹⁴² तदुत्तरे भगिनी । ... तस्या अपि प्राप्नुमोव उत्पन्नत्वेन भोजनत्वविशेषाच्च समोपता इव नास्ति । न च साधु धनग्रहणयोग्यकत्वेनोक्तः । पृ. मयूख p. 143.

widow and mother are not gotrajas (in this sense of being born in the gotra) but on marriage they enter the gotra of their husbands and become sagotra. Further, on the same reasoning, a son's daughter, brother's daughter, father's sister and other women born in the family of the deceased will become his gotrajas (though not sagotras because on marriage they pass into the gotra of their husbands). But these other women are not expressly recognised even by the V. Mayūkha as gotrajas. Even though she was not mentioned in the Mit. the sister has been recognised as a gotraja sapinda by the Bombay High Court in parts of the Bombay Presidency where the Mit. is the paramount authority. The order of heirs under the Mit. would be as follows:—Full brother, half brother, full brother's son, half brother's son, paternal grandmother, sister (full being preferred to half), paternal grandfather. According to the V. Mayūkha the order is slightly different, viz. full brothers along with sons of full brothers that are dead, full brother's son, grandmother, full sister, halfbrother, halfsister, paternal grandfather. The unmarried sister had been recognized as entitled to a share when brothers came to a partition and they had to provide for her marriage expenses. Vide above pp. 619–620 and Nār.¹⁴⁴³ (dāyabhāga, 13), Visṇu Dh. S. 18, 35, Manu IX. 118, Yaj II. 124. In Madras the sister had been recognized as a bandhu. The Legislature has intervened and laid down (Hindu Law of Inheritance Amendment Act II of 1929) that in territories governed by the law of the Mitākṣarā and in respect of the property of males not held in coparcenary and not disposed by will, a son's daughter, daughter's daughter, sister and sister's son shall be entitled to rank as heirs in the order specified in the Act next after a father's father and before a father's brother. The first three of these were before this Act not at all recognized as heirs in the whole of India except in Bombay (where the sister was recognised as a gotraja sapinda and the first two as bandhus) and except in Madras (where the first three were recognized only as bandhus). The sister's son was given a very high place as a sapinda under the Dāyabhāga and was treated as a bandhu elsewhere in India. This enactment does not affect the Dāyabhāga scheme and so the three females mentioned in the Act are not heirs even now under the Dāyabhāga. The sister's place as settled by Bombay decisions is after the paternal

1443. गृहेष्टायांशोऽधिको द्वेषः कनिष्ठायामरः स्मृतः । समाजनाजः द्वेषः स्मुरमना भगिनी तथा ॥ मारद (दायभाग 13).

grandmother and before the paternal grandfather, while the above Act places her after the paternal grandfather. In *Bai Mahalaxmi v. The Deputy Nazir* 45 Bom. L. R. 434 it has for this reason been held that the Act does not apply to the Bombay Province. If it be held that the Act does apply to Bombay (except as to the sister), then the same Act will have to be deemed to be laying down two different orders of succession as to the same four heirs in different provinces, which, to say the least, is not a reasonable or desirable way of interpreting statutes (just as in the case of texts).

Some difficulty is caused by the use of the word *antāna* in the Mit. as regards the father's, grandfather's and great-grandfather's line. It has been seen above (p. 731) that the compact series ends with the brother's son (father's son's son i. e. after two descendants of the father) according to the Bombay High Court, while elsewhere in India it is supposed to end with the brother's son's son (i. e. after three descendants of the father). The Mit. expressly mentions only two descendants in the grandfather's and great-grandfather's line. The general rule is that sapinda relationship extends to six descendants of each line (excluding the man or ancestor from whom the counting is made). The further general rule gathered from the meagre words of the Mit. is that the nearer line excludes the more remote (e. g. the grandfather, his son and grandson are expressly mentioned by the Mit. as taking before the great-grandfather, his son and grandson). The question is whether the 3rd, 4th, 5th and 6th descendants of a nearer line would exclude even the 1st or 2nd descendant of a remoter line e. g. whether the great-grandson of the grandfather would take before the son or grandson of the great-grandfather or whether the 6th descendant of the grandfather would take before the son of the great-grandfather. There were three views¹⁴⁴ on this point.

1444. Vide *Buddha Singh v. Lalte Singh* L. R. 43 F. A. 208 pp. 230-24 for the three views and their exponents. The F. C. overruled the first view and held (p. 227) that the descendants in each ascending line up to the fixed limit should be exhausted at any rate to the third degree before making the ascent to the next line in order of succession. मोक्षमार्गान्देव ज्ञानु-
त्सुतयोनिर्द्वेष्टं सप्यमावेपि पुत्रकृत्तपोरतिपातस्य कोत्रनेपु पितामहादिषु तस्य तस्य सन्ततो
पितुसन्ततानि द्वयोरेव पुत्रपौत्रपौत्रसन्ततानि ज्ञापनार्थमात् । स्मृतिच. II. p. 300. In Sm.
C. II. p. 300 the passage as printed is somewhat corrupt. The Subodhi also says 'पितुसन्तानो ज्ञानुत्सुतयोनिर्द्वेष्टः' p. 74; vide मद्वा. पा. p. 674 also for the same view.

The first view, relying upon certain words of the Sm. C., held that after two descents in each line, one should ascend into a remoter line and after the two descendants of that line are exhausted, one should revert to the 3rd to 6th descendants of a nearer line. The 2nd view was that in each line three generations were to be first exhausted, because the word *putra* in several places in the Mit. includes the three male descendants. The 3rd view¹⁴⁴⁵ was that in each line six descendants were to be exhausted before ascending to the next remoter line (as sapinda relationship extended to six degrees).

Another question is whether the widows of agnatic relations (such as the son's widow, brother's widow, step-mother or paternal uncle's widow) are included in the term '*gotrajāh*' for purposes of inheritance. Under the *Dāyabhāga*, as well as under the *Mitākṣarā* throughout India (except in the Bombay School), the widows of gotraja sapindas are not heirs at all, since according to almost all writers women do not inherit except when expressly mentioned by texts. In the Bombay School the position is different. According to both the Mit. and the *Mayūkhya*, wives enter by marriage the gotra of their husbands and become sapindas of their husbands. The *Bālabhāṭṭi* declared the son's widow to be an heir even before the paternal grandmother and includes females also in the word *gotrajāh*. When *gotraja* was rendered as *sanānagotra*, the term became wide enough not only to include those born in the gotra but even those who entered the gotra by marriage. Besides, it was argued that if the paternal grandmother or paternal great-grandmother succeeded as a gotraja there was no reason why other widows of other gotrajas should not succeed. From the earliest days of British rule the gotraja sapindas (such as the son's, brother's, paternal uncle's widows) have been recognized as heirs in the Bombay Presidency. They take only a limited estate like the owner's widow or mother or

1445. The third view was propounded by Telang J. in *Rachava v. Kalingappa* 15 Bom. 716, which is referred to by the P. C. in 42 I. A. 208, at pp. 220 and 226. The P. C. do not dissent from Telang J. but do not expressly approve of his view as it was not necessary to do so in that case, where the question was whether the great-grandson of the grandfather of the deceased was to be preferred to the grandson of the great-grandfather and it was held by the P. C. that he was to be preferred. The 2nd view appears to be supported by the words of Aparārka p. 745 'एवं ज्ञात्वा सत्युज्ज-सप्तमैव दुर्लभं पिपुसमन्तौ त्रयः सत्यासुजाः सपिण्डाः । एवं पित्रात्महसन्तौ पतिवामहसन्तौ च । एवामभावे पित्रादिवपरप ने प्रपितामहौ पुत्रादिवर्षं सपिण्डाद्द्वयवाहकम् ।'

paternal grandmother. They are recognized rather on the ground of 'positive acceptance and usage' by the Privy Council than on the ground of any texts¹⁴⁴⁶. They occupy the same place as their husbands, succeed after the compact series, the sister and half-sister and only after all the male gotraja sapindas (up to the 7th degree inclusive of the ancestor) properly belonging to the line to which their husbands belonged; e. g. the son's widow would succeed before the brother's son's¹⁴⁴⁷ son, the brother's widow or step-mother would succeed after all the six male descendants of the husband's father, but before the father's father, paternal uncle or his son &c. These widows of gotraja sapindas succeed before any bandhu. Since Act XVIII of 1937 a man's own widow, his predeceased son's widow and the widow of a predeceased son's predeceased son succeed along with his son or sons throughout India.

Samānodakas. According to the Mit. gotrajas are either sapindas or samānodakas. The word 'samānodaka' has a technical meaning. Acc. to Manu V.60, 'the sapinda relationship ceases with the seventh person; the relationship of samānodaka¹⁴⁴⁸ ends when birth (in the family) and name are no longer known'. This occurs in the chapter on impurity. The Mit. declares that the samānodakas comprise males seven generations beyond the sapindas or all males (beyond sapindas) whose birth (in the same family as that of the deceased) and name are known. It quotes a text of Bṛhan-Manu, 'the sapinda relationship ceases with the seventh person; the relation of

1446. Vide *Lallubhai v. Mankarbai* 2 Bom. 388, 447, which went up to the Privy Council as *Lallubhai v. Cassibai* L. R. 7 L. A. 212 at p. 237. In *Gandhi Magantel v. Bai Jaleb* 24 Bom. 192 (F. B.) at p. 212 it was observed: 'The grandmother's claim was indeed found so strong that it served to help the widows of collateral sapindas to be also recognized as gotraja sapindas'.

1447. Vide *Appaji v. Mohanlal* 54 Bom. 564 (F. B.) for the daughter-in-law being preferred to a brother's grandson; *Kashibai v. Moreshear* 35 Bom. 389 (where the paternal uncle's grandson was preferred to a paternal uncle's widow because he was a male gotraja sapinda of the same line within seven degrees, to which the widow's husband belonged); *Basangarda v. Basangarda* 39 Bom. 87 where the brother's widow was preferred to the paternal uncle's son (as she belonged to a nearer line).

1448. सपिण्डता तु दृश्ये सप्तमे विनिर्वाते । समानोदकभावनतु जन्मनाम्नोरप्यद्वये ॥ मनु V. 60 ; यथाह बृहस्पतिः । सपिण्ड ... वर्तते । समानोदकभावस्तु निवर्तते चतुर्दशतः । जन्मनाम्नोः सप्तमेरेके तत्परं गोत्रमुच्यते । मिता. on वा. II. 136. These verses are attributed to बृहस्पति by म. नि. p. 434

samānodaka ceases after the 14th; according to some it extends as far as the memory of name and family (or birth) reach; the gotra is said to extend up to that'. The *samānodakas* comprise the 7 ascendants of a person after the great-grandfather's great-grandfather, the 13 descendants of these seven ascendants, the 7 descendants after the 6th descendant of his 6 male ancestors from his own father; and descendants of himself from the 7th to the 13th. The Privy Council have ruled¹⁴⁴⁹ in a recent case that, according to the *Mitākṣarā* school, *samānodaka* relationship does not extend beyond the 14th degree (from and inclusive of the common ancestor of the claimant and the propositus).

The word '*samānodaka*' literally means 'those who offer to or receive water from the same person'. The word is employed by Vas.¹⁴⁵⁰ 17, 79. But in the law of inheritance it has a technical meaning as stated above.

Bandhu (cognate).¹⁴⁵¹ It has been seen above (on p. 742) how the *Dāyabhāga* shuffles cognates among the gotrajas.

1449. Vide *Atmarām v. Bafirao* L. R. 63 I. A. p. 139 where it was said that in the event of a conflict between the ancient text writers and the commentators the opinion of the latter prevails in the provinces where their authority is recognized on the ground that the commentators only voiced the usage of the time and of the country in which they lived. The case of *Bai Devkore v. Amritram* 10 Bom. 372 where the word *samānodaka* was interpreted to include any agnate without any limit of degree was not overruled but was distinguished on the ground that it was governed by the law of the *Vyavahāra-mayūkha* which quotes only Manu V. 60 and does not quote *Bṛhan-Manu*.

1450. अथ ऊर्ध्वं समानार्धं जन्मपिण्डोद्गमोपाजानां पूर्वः पूर्वो न विचार्य । वसिष्ठ 17, 79.

1451. The word '*bandhu*' is a very ancient one and has been used in various senses throughout the ages. In Rg. I. 113, 2 Night and Dawn (*Uṣas*) are called *samānabandhū* (bound together or having a common relative). In Rg. I. 154, 5 (*urnhramasya sa hi bandhur-itthā*) the word appears to be used in the sense of 'friend'. In Rg. I. 164, 33 '*nābhi*' and '*bandhu*' are employed one after another. The sage *Vasiṣṭha* tells *Śrīva* (Rg. VII. 72, 2) that their mutual friendship is ancestral and their relation is common (*yaśorhi nah saṅhyā pitṛyāni samāno bandhurata tasya viṣṭam*). Vide also Rg. V. 73, 4, VIII. 21, 4, VIII. 100, 6, IX. 14, 2. In the *Atharvaveda* V. 11, 11 *Atharvan* is said to be the *bandhu* of the gods and *Varuṇa* is said to be both the friend (*saṅhā*) and *bandhu* (relative) of the sage. In *Atharvaveda* VI. 15, 2 and VI. 54, 3 the same half verse occurs, 'whoever

literally so called. According to the Mīl. bandhus are sapindas of the deceased belonging to a different gotra. Bandhus succeed under the Mīl., the V. Mayūkha and all other authorities except those of the Dayabhāga school only on failure of samānodakas (or sodakas). It will have been noticed from the discussion above that gotrajas, whether sapindas and samānodakas, are all agnates (and in some cases their wives) i. e. persons related to the deceased by unbroken male descent. The bandhus are persons related to the deceased through one or more females. The basic texts on the inheritance of *bandhus* are three verses attributed to Vṛddha-Satātapa

(Continued from the last page)

whether our relative or not attacks us' *subandhuścāsubandhuśca yosmān-abhidāsatī*). In the Vāj. S. IV. 22 (*asme ramastvāsmē to bandhuh*)¹ the poet prays that the god may find delight in them and find in them his bandhu. Among sūtras Gaut. IV. 3 and Vārahaghyā 9 speak of pitṛbandhus and mātṛbandhus (persons related through the father and mother). In Yāj. the word *bandhu* or *bāndhava* occurs many times and has at least three senses viz. relative in general (in I. 82, 108, 113, 116, 220; II. 144, 280; III. 11, 239), agnate (II. 294), cognate (II. 135, 149, 264). Manu IX. 158 and XII. 79 employ the word *bandhu* in the sense of relative in general. The Āp. Dh. S. I. 7. 21, 8 and II. 5. 11, 16 and Gaut. 14, 18 employ the word '*yonisambandhu*' for persons connected through a female. On the other hand Pāṇini V. 3. 23 (*ṛto vidyāyonisambandhebhyaḥ*) appears to employ the word in a general sense viz. 'blood relation' (whether paternal or maternal). Another word frequently used from Vedic times is '*jāti*' which generally means 'agnate' or 'relative'. Vide Rg. X. 66. 14, X. 117. 9. In the Atharvaveda IV. 5. 6 a man desirous of a clandestine intercourse with a woman prays '*scapantvāsyai jātuyāḥ scaptrayam-abhito janah*'. In I. 1. 35 Pāṇini appears to use the word '*jāti*' in the sense of agnates '*स्वमज्जातिधनासृणाम्*'. In Gaut. II. 45, Āp. Dh. S. I. 3. 10. 3 '*jāti*' occurs and is explained by Haradatta as agnatic relations. In Manu III. 51 (*ṅnatibhyo draviṇam dattva*) *jāti* appears to mean paternal relations. In Manu III. 264, IV. 179, Yāj. II. 149 *jāti* is distinguished from *bāndhava* or *bandhu* and so means 'agnates'. Two other words are '*sajāta*' and '*sanābhi*'. The first occurs in the Tai. S. I. 6. 2. 1 and I. 6. 10. 1 (*ugrohaṁ sajāteṣu bhūyāsam*) and in the Atharvaveda I. 9. 3, III. 8. 2, VI. 5. 2 and means 'agnates or kinsmen'. The word *sanābhi* occurs in Rg. IX. 89. 4 and means also the same thing as '*jāti*' in Āp. Gr. VII. 20. 18, Manu V. 72, Br. (S. B. E. 33 p. 310 verse 11), but in the Nirukta IV. 21 and in Kāṭ. (q. by Aparārka pp. 669-670) the word *sanābhi* is used in a wider sense (including paternal and maternal relations). The Amarakośa gives *sapinda* as a synonym of *sanābhi*. नमस्य संनद्धा सर्वा ज्ञाने इत्यहोर्लोकमोक्षे ज्ञातृन् सनाभम् इत्याचक्षते सनभम् इति च । निरुक्त IV. 21. श्रीरसाग्नी (on असरकोश) explains समानी नामिदंलोकौ ते सनाभम् and refers to पाणिनि VI. 3, 85.

or Baudhāyana. They may be translated as follows: 'The sons of one's father's sister, the sons of one's mother's sister and the sons of one's maternal uncle—these are to be known as *ātmabandhus* (one's own *bandhus*); the sons of one's father's father's sister, the sons of one's father's mother's sister, the son's of one's father's maternal uncle—these are to be known as one's *pitrbandhus* (father's *bandhus*); the sons of one's mother's father's sister, the sons of one's mother's mother's sister, the sons of one's mother's maternal uncle—these are to be known as the *mātrbandhus* (mother's *bandhus*).¹⁴⁵² The Mit. states on this text that *bandhus* are of three kinds—viz. *ātmabandhus*, *pitrbandhus* and *mātrbandhus* and that *ātmabandhus* succeed before *pitrbandhus* on account of their greater propinquity to the deceased and *pitrbandhus* succeed before the *mātrbandhus*.¹⁴⁵³ The treatment of the rights of *bandhus* in the Mit. and other commentaries and digests is very meagre. This has led in modern times to a bewildering mass of case law on the inheritance of *bandhus*.

The first question is whether the enumeration of *bandhus* in the verses quoted is exhaustive or only illustrative. The V. P. expressly¹⁴⁵⁴ states that if the enumeration be held to be exhaustive absurd results would follow. For example, a maternal uncle's son is expressly named as an *ātmabandhu* in the verses quoted above, but his father (the maternal uncle), being not mentioned, would on that hypothesis be excluded. Therefore it was held by the Privy Council in a very early case¹⁴⁵⁵ that the enumeration of *bandhus* is only illustrative, that the maternal uncle though not mentioned is a nearer

1452. आत्मपितृव्यसुः पुत्रा आत्ममातृव्यसुः सुताः । आत्ममातुलपुत्राश्च पित्रेवा आत्म-
बान्धवाः ॥ पितुः पितृव्यः पुत्राः पितृमातृव्यसुः सुताः । पितृमातुलपुत्राश्च पित्रेवा पितृ-
बान्धवाः ॥ मातुः पितृव्यः पुत्रा मातृमातृव्यसुः सुताः । मातृमातुलपुत्राश्च पित्रेवा मातृबान्धवाः ॥
q. by the *mita*. on ch. II. 136. These are ascribed to श्रीधरपण by the *वरा. मा.*
III. p. 528 and *व्य. नि.* p. 435 and to इन्द्रशास्त्रण by *मद्. वर.* p. 674 and
बाह्यम्भडी.

1453. तच्च चात्तरङ्गत्वात्प्रथममात्मव्यवसौ प्रथमावस्तुभावे पितृव्यप्रवर्तदुभावे मातृ-
व्यव्यव इति क्रमो वेदितव्यः । *मिता.* on *च.* II. 136. Almost the same words occur
in the *मद्. वर.* p. 674.

1454. योगीश्वरचरणेपि यन्पुत्रदेन मातुलाशुपालरणमप्यथा मातुलादीनामग्रहणमेव
प्रसज्येतेति वस्तुवाणां धर्माधिकारस्ततः पर्यासजानां तेषामेव स नेति महद्दोषोऽप्यवमपद्येत ।
व्य. व. pp. 530-531.

1455. *Vide* *Gridhari Lal v. The Bengal Government* 12 Moore's
I. A. 448.

bandhu and would succeed in preference to his own son who is expressly mentioned. In *Balasubrahmanya v. Sabbayya* 65 L. A. 93 it was held that under the Mitākṣarā the principle of proximity of blood relationship applies to the succession of bandhus, that in determining which of two ātmabandhus is entitled to succeed nearness of degree and not religious efficacy is the proper test to apply, that when the ātmabandhus are equal in degree the test of religious efficacy may be applied to determine preference and that the maternal uncle of the deceased is entitled to preference over the deceased's father's half sister's son. This was followed in *Viranganda v. Yellappa* 1 L. R. (1943) Bom. 259 (F. B.) where the mother's brother of the deceased was preferred to the father's sister's son. So also the mother's father would be a bandhu. It is strange that the deceased's own descendants through a female or the deceased's father's descendants through a female such as the son's daughter's son, daughter's son's son, daughter's daughter's son, sister's son or sister's daughter's son, are not mentioned in any authoritative commentaries or digests as his *bandhus*. Further, the bandhus enumerated in the three verses do not go beyond the 4th degree from the common ancestor. But bandhu relationship extends up to five degrees at least. There is an ancient instance of the sister's daughter's son having succeeded to a Buddhist *bhikkhū* in Cambodia (in sake 586). This would be so only according to the principles of the Mīt. Vide 'Indian Cultural Influence in Cambodia' p. 55 by Dr. Bhanu Raj Chatterji (Cal. 1928). All the above (such as the son's daughter's son) have been recognized by the Indian Courts as ātmabandhus entitled to inherit. In *United Provinces v. Kanhaiya Lal* 16 Lucknow 551 it has been held that the father's father's daughter's son's son would be an ātmabandhu of the deceased. In an early case¹⁴⁵⁶ in British India two propositions were laid down, viz. (1) there must be mutuality of sapinda relation between the deceased and the claimant (i. e. each must be a sapinda of the other) and (2) that in order that a man may be an heritable bandhu of the deceased they must be related *directly* through themselves or

1456. Vide *Umair Bahadur v. Udai Chand* 6 Cal. 119 (F. B.), 128 where it was held that a man's sister's daughter's son is a heritable bandhu but a remark was made (which was an *obiter dictum*) that the sister's daughter's son's son would not be a bandhu of the propositus because the latter was not a descendant of the grandfather of the former, his father or mother.

through their mother or father. These propositions were accepted by the Privy Council,¹⁴⁵⁷ which further said that sapinda relationship extends in the case of bandhus only up to five degrees. The first proposition about mutuality has some support in the interpretation put on the famous verse of Manu IX. 187 by the Bālabhāṭṭi and the Subodhini (vide above note 1418). But difficulty is created about mutuality by the unwarranted assumption that the common ancestor must be a member of one out of four families as stated by Sarvadhikari. The other propositions, however, are not supported by any texts or sound reasoning. Since the enumeration of bandhus is admitted to be not exhaustive, no sound inference can be drawn from the list of nine bandhus that a heritable bandhu must be connected with the deceased in any particular way. All that can be required is that he must be a bandhu as defined by the Mit. and connected with the deceased by having particles of the body of a common ancestor within the limits of sapinda relationship as laid down by the Mit. The limit of five degrees categorically laid down by the P. C. is not, it is submitted with great respect, based on very sure or strong foundations. The Mit. says that sapinda relationship extends to seven degrees when traced through the father, that wherever the word 'sapinda' is employed this meaning has to be understood and it extends up to five degrees when traced through the mother. Vide H. of Dh. Vol. II. pp. 454-455. What is material is

1457. Vide *Ramchandra v. Vinayak* L. R. 41 I. A. 290 (= 42 Cal. 384 at pp. 418-421) for the propositions about mutuality, relationship through himself, father or mother and restriction to five degrees. Dr. Sarvadhikari (T. L. L. p. 630ff) is not right in inferring from the nine bandhus expressly mentioned in the verses quoted above that the propositus must be a descendant of a common ancestor who is a member of the following families, viz. (1) claimant's agnate family, (2) claimant's mother's agnate family, (3) claimant's father's mother's agnate family, (4) claimant's mother's mother's agnate family. Following this opinion, it was held in *Louji v. Mithabai* 2 Bom. L. R. 842 that the great-grandson of a sister is not an heir under Hindu Law. But this decision is against the definition of sapinda given by the Mit. and is wrong. Vide *Chinna v. Palmanabha* 44 Mad. 121 pp. 128-130 for a reasoned and trenchant criticism of the requirement of mutuality laid down without any discussion or explanation in the case of 6 Cal. 119 and the views of Sarvadhikari. It is to be regretted that owing to the ignorance of Sanskrit on the part of most judges that had to decide cases of Hindu Law, the opinions of individual learned authors like Mayne and Sarvadhikari were followed without personal examination by judges of the authorities on which the opinions of authors were based.

not whether a female intervenes somewhere, but whether the person about whose sapindaship a question is raised traces his descent to a common ancestor through his father or through his mother. In the P. C. case the claimant claimed sapindaship with the deceased through his mother, and it was rightly decided that he being 6th from the common ancestor was not a bandhu. But to lay down as a universal rule that a bandhu in order to inherit under the Mit. should not be beyond five degrees from the common ancestor is against the definition of sapinda given by the Mit. itself and unduly narrows the express words of the Mit. The words of the P. C. 'the sapinda relationship, on which the heritable right of collaterals is founded, ceases in the case of the bhinna-gotra sapinda with the fifth degree from the common ancestor' (L. R. 41 I. A. 290 at p. 312) are very generally expressed and are susceptible of the interpretation that they lay down the rule of five degrees even when the claimant claims¹⁴³⁸ relationship with the deceased through his own father. Some support for the Privy Council rule that sapinda relationship ceases with the 5th

1438. Vide *Brif Mohan v. Kishun Lal* (1938) A. L. J. 670 where the Allahabad High Court held that, even when the claimant traced sapinda relationship through his father, heritable bandhu relation ceases after the fifth degree. But in *Kesar Singh v. Secretary of State for India* 49 Mad. 652 at p. 690 it is said that, though in the P. C. decision there are some observations which at first sight imply that sapinda relationship of bandhus for inheritance ceases with the 5th degree in all cases, there is nothing to suggest that the Privy Council intended to do away with the well-known distinction between bhinnagotra sapindas that claim relationship through their father and those that trace it through their mother. There is great diversity of view yet about what the P. C. meant in 41 I. A. 290. In *Selam Nagamma v. Reddam* I. L. R. (1943) Mad. 739 (F. B.) it was held that Dr. Sarvadhikari is wrong in his restrictions of heritable bandhus to the lines he propounds, that 34 All. 698 is wrongly decided and that 49 Mad. 652 lays down the correct law. On the other hand, in *Hanmant v. Vasudev* I. L. R. (1943) Bom. 465 it has been held that the P. C. means that heritable bandhus whether claiming through the father or the mother must be within five degrees from the common ancestor. Vide *Debi Das v. Mukat Behari* I. L. R. (1943) All. p. 131 which lays down several rules deducible from an examination of numerous cases. As an illustration of how the law of the succession of bandhus is in a bewildering state, the following two cases may be read. In *Sakharam v. Rathrishna* 49 Bom. 739 (F. B.) it was held that a father's sister's son is to be preferred under the V. Mayūkha to the maternal uncle, but the P. C. decided in *Balaubramanya v. Subbaya* I. R. 65 I. A. 93 that the maternal uncle is entitled to preference over the father's sister's son.

degree from the common ancestor in the case of bhinnagotra sapindas may be found in the words of Mitramisra in his commentary on Yaj. I. 52, in the implication of the words of Kullūka¹⁴³⁹ on Manu. V. 60 and in the remarks of the Bālabhāṭṭa (p. 191). But this view is opposed to other weighty authorities such as the Nirṇayasindhu and the Dharma-sindhu.

The whole law about the succession of bandhus is in a confused state owing to conflicting decisions, but the P. C. has laid down certain propositions which may be set down here: (1) ātmabandhus succeed before pitrbandhus and pitrbandhus before mātṛbandhus; (2) the nearer in degree in each class of bandhus is preferable to the more remote; (3) as between bandhus of the same class, the conferring of spiritual benefit would be a ground of preference, as the Viramītrodaya invokes that principle in several cases (and so the father's half sister's son would be preferred to the mother's sister's son, though both are ātmabandhus and of equal degree); (4) if the above three rules fail, bandhus *ex parte paterna* (on the father's side) succeed before bandhus *ex parte materna* (on the mother's side); (5) the bandhu between whom and the propositus a lesser number of females intervenes is to be preferred. As a corollary of the 2nd rule it should follow that the descendants of the propositus would be preferred to ascendants and collaterals and that bandhus of the same class that are descendants of a nearer line would succeed in preference to descendants of a remoter line though of the same class. But this last proposition has not yet been settled by the Privy Council. It has been, however, held in *Debi Das v. Mukut Behari* L. L. R. (1943) All. 131 that a sister's son's son should be preferred to the deceased's cousin's daughter's son, since the former belongs to a nearer line.

For the purposes of this work it is irrelevant and unnecessary to wade through the mass of case-law on the succession of

1439. Kullūka after quoting the मनुस्मृत्युक्तं on the question of sapindaship based on the offerings of pīṇḍas remarks, 'सगोत्रत्वे स्वेवं सपिण्डता । अत्र एव सङ्ग-
लिखितौ—सपिण्डता तु सर्वेषां गोत्रतः सातपथीयबी. ' मित्रमिश्र on पा. I. 52 quotes the
smṛti text, 'सगोत्रे खलु सपिण्डत्वं विज्ञेयं सातपथीयवत् । विगोत्रे तच्च सर्वत्र विज्ञेयं पाञ्च-
गोत्रवत् ॥' and remarks 'तेन पितृमातामहादिवत्तया अपि विद्यात्वात् धर्मसंनतं न विहरयेत् ।
माता च स्वरम्भमपोजकत्वशोणितं बोध्या । तेन पितृमातामहादिवत्तयादेर्दुर्दासः । एवं च
पितृमातामहादिवत्तयाधिकसम्पत्त्या परित्याग्यारोपि सङ्गच्छते ।'

bandhus. One or two matters, however, call for remark. If the theory of spiritual benefit be strictly applied, many of those who would inherit as bandhus under the Mit. system would be barred from inheritance. For example, the daughter's son's son¹⁴⁵⁹ or daughter's daughter's son would be a heritable bandhu under the Mitaksarā, but under the Dāyabhāga he would not be so, as he offers no pīṇḍa to the deceased or to any of the latter's ancestors. It is probably to obviate this unnatural and unjust consequence that the Dāyatattva refers to the text of Br. (quoted above in a 1419) in which the word 'bandhavāḥ' occurs, remarks that the relatives of the father and mother of (the deceased) inherit in the order of their nearness to the latter and quotes the three verses about the three classes of bandhus, indicating thereby that spiritual benefit is not the sole test, but that where it fails the test of blood relationship may be applied.¹⁴⁶⁰

Very elaborate rules have been evolved by Sarvadhikari in his Tagore Law Lectures on the Hindu Law of inheritance (2nd ed. of 1922, pp. 571-640). The author devoted great industry, labour and ingenuity in evolving these rules. But one regrets to say that he raised a stupendous structure on very slippery and meagre foundations. And the pity of it is that many Judges have more or less followed his lead, though emphatic disapproval of his views, whereby the list of bandhus capable of inheriting has been very much restricted, has not been wanting.¹⁴⁶¹ It is not possible to examine here in detail his reasonings and results. But the futility of much that he has evolved can and must be briefly shown. The only solid foundations that we have in the Mit. are: (1) the definition of sapīṇḍa given by it on Yāj. I. 53; (2) the remark that bandhus are bhinnagotra sapīṇḍas (as contrasted with gotrajas); (3) that the bandhus of a man may be described under three classes; (4) that those that may be called ātmanabandhus succeed before those called pīṭrbandhus and these latter inherit before mātṛbandhus. It is agreed on all hands that

1459a. Vide 11 Mad. 287, 17 All. 523, 30 Mad. 406 (for the daughter's son's son's succession) and 31 All. 454, 58 Mad. 238 (for the daughter's daughter's son's succession).

1460. बृहस्पत्युक्तवाक्येन इत्यनेन यथाक्रममसत्पितृमातृवाक्येन धर्माधिकारिणः । ते च 'आमपितुः ससुः पुत्राः ... विज्ञेया मातृवाक्येन' ।¹ द्वापतर p. 126.

1461. Vide *Kesar Singh v. The Secretary of State for India* 49 Mad. 652 at pp. 661, 686-80 for dissent from Sarvadhikari's views.

the nine bandhus enumerated in the verses of Śātātapa or Baudhāyana are only illustrative. Therefore, the nine bandhus expressly mentioned should not have been used to exclude any one as not a heritable bandhu, as we have not got anywhere an exhaustive enumeration. Any one who satisfied the first two requirements stated above was a bandhu. Of the nine bandhus enumerated in the verses quoted above, none is connected by direct descent with the propositus, his father or mother; but one is a descendant of his paternal grandfather, one of his paternal great-grandfather, two of his maternal grandfather, two of his father's maternal grandfather, one of his mother's paternal grandfather, two of his mother's maternal grandfather. Sarvadhikari makes a different classification of these (p. 627) viz. 'two are connected through the father, three through the mother, two through the paternal grandmother and two through the maternal grandmother'. The whole trouble has been caused by this latter grouping. Instead of emphasizing lines of direct descent, he catches hold of females who are never spoken of in ancient works in connection with tracing descent (except in the case of the mother of the man concerned). If, because the illustrations given happen to be connected only with four lines of families, persons connected with the propositus through other lines are to be excluded, there is no reason why a man's own daughter's son's son, son's daughter's son, sister's son, or sister's son's son should be held to be bandhus. They bear no close analogy to the ātmabandhus enumerated by Śātātapa. But it is admitted by Sarvadhikari that they are ātmabandhus. The terms ātmabandhu, pitṛbandhu and mātṛbandhu are mere labels or devices to show nearness and preference among bandhus. Acc. to the V. Mayūkha¹⁴⁶² the words pitṛbandhu and mātṛbandhu are to be dissolved as *saṣṭhi-ṣatpuruṣa* compounds (pituḥ bāṇdhavāḥ

1462. मनु एतच्चादीनां सर्वेषां सुतनिकविज्ञानमित्थं धनसम्पत्तेः बाण्डवानामपि तथैवास्तु । अतः कथं पितृमातृश्च बाण्डवानां धनसम्पत्तयः । पितुः पितृवन्धुः पुत्रा इत्यादि तु संज्ञा-संज्ञिसम्पत्तयाप्राप्य न धनसम्पत्तयापेक्षितं चेदुच्यते । विनाप्येतद्वचनं पितृमातृपितृपितृमा-दिविधं पितृमातृबाण्डवेष्वपि गोत्रेभ्यः तापदुत्तिसम्भवे संज्ञासंज्ञिसम्पत्तयोरुपानयनार्थापत्तिः । तेन बन्धुमुद्दिश्य धनसम्पत्तयविधौ पितृमातृवन्धुभाषणेनैव वचोर्धत्ता । बाण्डवेनादीनां चादि-विधायकैवमेवेति दिङ् । न्य. मयूख p. 144. In *Gajadhar Prasad v. Gauri Shankar* 54 All. 698 (F. B.) Mukerji J. (at pp. 725-26) prefers to dissolve the word पितृवन्धु or मातृवन्धु as either पञ्चमीतदुत्तर or तृतीयातदुत्तर (पितुः बन्धुः, पित्रा बन्धुः) rather than as षष्ठीतदुत्तर. No Sanskrit authority is quoted for doing this and this view of his is opposed to the view of the न्य. मयूख, the सरस्वती-विज्ञान and some other works.

or *mātuh bāndhavāḥ*) i. e. according to it *pitṛbandhus* or *mātṛbandhus* are bandhus of the father or mother and must also be bandhus of the propositus if they are to inherit. It is not known in what context the three verses quoted in the *Mit.* and other digests from *Śātātapa* or *Baudhāyana* occurred. In *Manu* V. 81 it is laid down that one should observe mourning on the death of a pupil, sacrificial priest and *bāndhava*s for the duration of *pakṣi*. It is possible that the three verses only illustrate what is meant by *bāndhava*s in such a connection.

The *Bālabhāṭṭi* (*vyavahāra* p. 214) here also explains that females are included in the word 'bandhu', although the verses quoted speak of 'putrah' only and the Bombay and Madras High Courts have allowed female bandhus to inherit, though in Madras the position assigned to female bandhus is very much lower than in Bombay.

Strangers as Heirs—In default of even bandhus, the *Mit.* states¹⁴⁶³ that the teacher (of the veda) is the heir of the deceased, in default of the teacher the pupil (and relies on *Āp. Dh. S.* II. 6. 14. 3) and that in default of pupil a *sābrahmacārī* (fellow student whose *upanayana* was performed by the same teacher as that of the deceased and who studied the veda under the same teacher)¹⁴⁶⁴ inherits. In the absence of even a fellow student the wealth of a brāhmaṇa was to be given to some *śrotṛiya* (a brāhmaṇa learned in the Veda) as laid down by *Gaut.* (28. 39) and in default of a *śrotṛiya* in the same village, as said by the *Dayabhāga* XI. 6. 37, to any brāhmaṇa, since *Manu* (IX. 188-189) says, 'in the absence of all (heirs), brāhmaṇas that have studied the three vedas, that are pure and restrained, take the wealth; in this way dharma does not suffer: the rule is that the wealth of a brāhmaṇa should never be taken by the king'. *Nār.*¹⁴⁶⁵ (*dayabhāga*, 51-52) is to the same effect. To the same

1463. बन्धूनामभावे आचार्यः । तदभावे शिष्यः । पुत्राभावे च । यस्यास्यः सपिण्डस्तदभावे आचार्यः । आचार्याभावे अन्तेवासीत्यपस्तम्बस्मरणात् । मिता.

1464. शिष्याभावे सज्जचारि धनभाक् । येन सौकरमादाचार्योपुपनयनः सपुनः दुर्धनानामासिः स सज्जचारि । मिता. The word सज्जचारि is derived by Pāṇini VI. 3. 86 as 'चरणे ज्जचारिणि'. The *सि. को.* explains 'ज्जचारिण्युत्तरपदे समासस्य सः स्याच्चरणे समानत्वेन सम्बन्धात्'.

1465. वतः सजातिः सर्वेषामभावे राज्यामि तत् । अथवा ब्राह्मणेभ्यः स्याद्वाजा धर्मपरायणः । नारद (दायभाग, 51-52). The *मिता.* has a different verse 'नारदो नाप्युक्तम्—ब्राह्मणार्थेन तस्मात्ते दायाद्व्येज्यं कथ्यते । ब्राह्मणार्थेन दायाद्व्येज्यं तस्मात्ते दायाद्व्येज्यं । इति'.

effect are Visnu¹⁴⁶⁶ Dh. S. 17. 13-14, Baud. Dh. S. I. 5, 120-122 and Śaṅkha-Likhita, Devala (q. by V. R. p. 597 and V. C. p. 155). This direction of so many ancient sages has not been respected in modern times.¹⁴⁶⁷ Manu (IX. 189) and Br.¹⁴⁶⁸ (S. B. E. vol. 33, p. 380 verse 67) say that the wealth of ksatriyas, vaiśyas and śūdras escheats to the king in default of heirs up to a fellow student. When the king takes by escheat heirless property he has to set apart a portion of the wealth of the deceased for the maintenance of his concubines and servants and for the performance of his funeral rites and śrāddhas as stated by Kāt.¹⁴⁶⁹ 931. Kaut. III. 5, Nār. (dāyabhāga, 52) provide that the king (when he takes heirless property) should provide maintenance for his women and both the Mīl. and the V. Mayūkhia explain that the word 'women' stands for *anaruddhantri* (exclusively kept concubine) and not for his wives (who would succeed as heirs and than there would be no escheat), because the word 'patni' is not employed in the verse. These verses of Nār. and Kāt. are the foundation of the right to maintenance of a concubine against the heirs of the deceased paramour in modern times.¹⁴⁷⁰

1466. तदभावे आङ्गणपनवर्त्ते राजगामि । आङ्गणार्थो आङ्गणानाम् । विष्णुधर्मसूत्र 17. 12-13; अथाप्युदाहरन्ति (अङ्गणं पुत्रपौत्रान् विधमेकाकिनं हरेत् । न विधं विधमिषादु-
र्बलस्य विधमुच्यते । तस्माद्देवा आङ्गणस्य नादृष्टौ परमे श्वेति पदं आङ्गणस्वमिति ।
बी. घ. सू. I. 5. 120-122; this is q. by वि. र. p. 597 (except the half verse
न विध-). वि. चि. pp. 155-156; परिषद्गामि वा ओषिपद्वयं न राजगामि । शङ्ख-
लिखित q. by वि. र. p. 598, वि. चि. p. 156. This is quoted as वैदीनसि by
अपरार्क p. 746.

1467. Vide Collector of Masulipatam v. Carvati Venkata S Moore's
I. A. 500 at pp. 326-327.

1468. पेयुषाः श्वविद्वद्भ्याः पत्नीभ्यामुपविर्जिताः । तेषां पुनहरो राजा सर्वस्याधि-
पतिरिति सा. # बृह. q. by अपरार्क p. 746, वि. र. p. 598.

1469. अदायिकं राजगामि गोपिद्वयपौर्ध्वदेमिकम् । अग्रास्य ओषिपद्वयं ओषिपे-
त्यस्तदुपेयम् # कात्या q. by मिता, on वा. II. 135, परा. मा. III. p. 535, अथ. नयूष
p. 139; तद्वत्पुत्रपौर्ध्वदेमिकं गोपिद्वयद्वयम् । मिता. ; अदायादिकं राजा हरेत् ओषिपि-
मेतकद्वयं सर्वमग्रास्य ओषिपद्वयम् । तद् वैविद्येयः प्रचक्षेत् । अर्चशास्त्र III. 5.

1470. Vide 2 Bom. 573, 607, 12 Bom. 26 (in both Kāt. is quoted),
26 Bom. 163, L. R. 53 I. A. at p. 163 for the concubine's right. In 48 Bom.
203 a woman whose husband was alive was not treated as a concubine entitled
to maintenance from the heirs of her deceased paramour, but this decision
has been recently overruled by a Full Bench in 47 Bom. L. R. p. 5 (F. B.).

Yaj. (II. 137) states a special rule¹⁴⁷¹ which is an exception to the general rule of inheritance laid down in II. 135-136 viz. '(the heirs) who take the wealth of a forest hermit, a *yati* (ascetic), a (perpetual) vedic student are in order the (vedic) teacher, a virtuous pupil, one who is looked upon as a brother and belongs to the same order'. According to the Mīt. the heirs mentioned are to be taken in the reverse order of the words of the text i. e. the *ācārya* (who is mentioned first among the three heirs) is to be taken as the heir of the last of the three mentioned in the first half of the verse, so that the teacher, good pupil and the person looked upon as brother are respectively the heirs of the perpetual student, the ascetic and the forest hermit. According to the Dayabhāga also the reverse order has to be taken, but it says that the wealth of the forest hermit, *yati* and perpetual student is taken respectively by one looked upon as brother, a worthy pupil and teacher, but that in the absence of these, any one who is in the same *śrama* as the deceased may take it. According to the Madanaratna¹⁴⁷² the order of heirs is the direct one, that is, the teacher, good pupil and accepted brother take the wealth of the forest hermit, ascetic and perpetual student, since the Viṣṇu Dh. S. (17. 15-16) expressly says so. The Mīt. adds that a brahmachārin is of two kinds viz. perpetual (*naiṣṭhika*) and *upakṛpavṛtta* (who intends to remain as a student for some time and then marry in order to confer the benefit of male progeny on his ancestors), that

1471. वानप्रस्थतिब्रह्मचारिणो विद्यमानिनः । क्रमेणाचार्यसच्छिष्यधर्मश्रवक-
तोषिनः ॥ वा. II. 137 ; क्रमेण पतिलोमक्रमेण ... ब्रह्मचारि नैष्ठिकः उपकुर्वाणस्य तु धर्मे
मात्रादुप एव सृष्टमिति । ... सच्छिष्यः पुनरप्यल्पशास्त्रश्रवणधारणतदुपास्तुष्टान्नक्षमः । कुर्व-
न्स्याचार्यादिरपि भागानर्हन्वात् । ... धर्मश्रवता पतिपञ्चो ज्ञाता एकवीथी एकाध्वनी धर्मश्रवता
चासा एकवीथी च धर्मश्रवकवीथी । मितः । पतिलोमक्रमेण यथासम्भवं धर्मे ज्ञेयम् ।
ब्रह्मचारि च नैष्ठिकोभित्तः पित्रादिपतिवामेन यावज्जीवमाचार्यकुलनिवासपरिचर्यानि-
ष्टाया तेन कृतत्वात् । द्वापभावा XI. 6.36; शिष्यस्य सम्पत्त्यनुपलक्षणम् । अत आचार्यधर्म-
मात्रकतोषिणापि तुष्टत्वापेव धर्मश्रवताकोपात् । ... अनेनैवाभिभाषेण याज्ञवल्क्योपि
आचार्यसच्छिष्यधर्मश्रवकतोषिन इत्युक्तस्य सम्बन्धं द्योतयितुं सच्छिष्य इति मध्ये परिगण-
यामास । तुषोधिनीः मदनरत्न explains धर्मश्रवता as समानाचार्यक and दीपकलिका
explains एकवीथी as समाससुखः. The word उपकुर्वाण occurs in वैश्वानरसम्राट्देव
II. 12 and in हारीश q. by अपरार्क p. 71. नैष्ठिक is derived from निष्ठा 'end',
विश्लेष. सू. 28. 46 and ईशा. II. 12 employ the word नैष्ठिक. लघुविश्व I. 24
defines. निष्ठा तत्रैव वैः सच्छिष्यनैष्ठिकः स उदाहृतः and मेघा. on मनु. III. 1 explains
निष्ठा समाप्तिं सच्छिष्यं नैष्ठिकः .

1472. एवं क्रमशः धर्म्य पतिलोमक्रमपरत्वंमात्रेण नैष्ठिकब्रह्मचार्यादिधर्ममाचार्या-
द्वयो सृष्टमिति च निष्ठातिशयः । अस्माकं तु वानप्रस्थधर्ममाचार्यो सृष्टीपाच्छिष्यो वेति
विश्लेषादुपकुर्वाणत्वं क्रमशः श्रवकत्वमप्युक्तं इति प्रतिपादयति । मदनरत्न folio 101 b. This
view of the Madanaratna is referred to by the च. मयूख p. 145.

Yājñavalkya's words apply only to the former, that if the latter (upakurvāṇa) leaves any wealth of his own it is taken by his mother, father and the other heirs. The Mit. further says that a worthy pupil is one who is capable of studying the philosophical parts of the Veda, of understanding them and of acting up to them, that a badly behaved pupil will not succeed, so also a badly conducted teacher shall not succeed. The Mit. explains that Yāj. III. 47 allowed a forest hermit to accumulate materials that will be enough to meet his needs for a day, a month or six months or a year and so he may on his death leave some wealth. Similarly, though an ascetic was required by Gautama (III. 10.) to make no accumulation of wealth, yet even an ascetic requires clothes to cover his body, he has his sandals and books on Yoga and the like; and so also the perpetual student requires these.

The heirs enumerated above succeed to persons in those religious orders in priority of their kindred. It has been held that members of the three twice-born classes alone can be ascetics with the result that their pupils inherit and not the kindred and that in the case¹⁴⁷³ of śūdra ascetics their kindred succeed unless some usage to the effect that a pupil inherits is proved. For the foundation and administration of *mathas* and properties attached to them, the selection of the heads of *mathas* and their powers and duties and about ascetics and their pupils, vide H. of Dh. vol. II. pp. 906-914 and pp. 944-952.

Reunion.—A reunion properly so called can take place only between those who were parties to the original partition. Reunion, therefore, postulates three stages, viz. (1) joint family, (2) partition between members of a joint family, (3) an intention and an agreement, express or implied, to reunite in estate among members who were parties to the partition. If persons who had separated in interest merely stay together, that is not

1473. Vide *Dharmapuram v. Virapantiyam* 23 Mad. 302 (holds that the ordinary law of succession applies to a śūdra ascetic); *Ramdas v. Baldevadasji* 39 Bom. 168; *Somasunaram v. Vaithilinga* 40 Mad. 545, at p. 569; *Haris Chandra v. Atir* 40 Cal. 545; but see *Sambasivam v. Secretary of State* 44 Mad. 704 (holding that the disciple of a śūdra ascetic who dies without leaving any blood relations is an heir under the Hindu Law, but that strict proof would be required of the claimant's spiritual relationship).

reunion in law, as said by the Sm. C. II. p. 302 and Vivāda-candra¹⁴⁷⁴ p. 82. The Vivādacandra quoting Viṣṇupurāṇa says that reunion may be implied from a course of conduct, even though an express agreement cannot be proved. There is a divergence of views as to who can reunite. The Mit., the Dayabhāga¹⁴⁷⁵, the Sm. C. hold, literally construing a verse of Br. (S. B. E. 33 p. 381 verse 72), that a member of a joint family when once divided can reunite only with his father, brother or paternal uncle, but not with any other relation (such as a paternal uncle's son or paternal grand-father), while the V. C. (p. 157), the V. Mayūkha (p. 146), the V. P. (p. 533) hold that the members expressly mentioned by Br. are only illustrative and that a person may reunite with *any* member who was a party to the original partition. A reunited person is called *sahsṛṣṭa* or *sahsṛṣṭin*¹⁴⁷⁶ (who has reunited wealth). The subject of reunion has a comparatively ancient history. Gaut. 28. 26 states the general rule that on the death of a reunited co-parcener the surviving reunited member succeeds to the share of the deceased. Kaut. (III. 5 p. 160) states¹⁴⁷⁷ that those, who live together though they may have no ancestral estate or do so after dividing their ancestral estate, may divide their reunited estate again in equal shares. Manu IX. 210 (= Viṣṇu Dh. S. 18, 41) is similar to it.

1474. सहस्रसं पुत्राणामाहत्य संसर्गभावाद्भनद्वारेण संसर्गो वाच्य इति तन्निमित्त-
भूताकण्ठेद्वकापनोदेन विभक्तानां पुनर्दीनां पूर्वदेकराशीकरणपर्यन्तः संसर्गो न पुनः सहस्रा-
समाधमिति मन्तव्यम् । स्मृतिच II. p. 302; संसर्गो नैकपाकवासमाधं संभूतव्यवसाये वात्मात्
किं तु निमज्जेकीकुतधनत्वम् । ... यावद्भनमाविभवद्भनं तमे वनस्य यथा तव तथा ममेति
स्वीकारः स च कश्चिद्वाचनिकः कश्चिद्व्यवहारान्वयेः । निवाद्यचन्द्र p. 82; यत्र संसर्गं
प्रमाणान्तरं नास्ति तत्र साधारणद्वारेण तत्तद्दशनिमित्तजननमपि प्रमाणम् । न च तादृशवचना-
नन्वेतदभावात्, अनुकलापि कृत्वा व्यवहारसिद्धेः । तदुक्तं विष्णुपुराणे । अनुकलापि वचः
किञ्चित् कुतं भवति कर्मणा । इति । निवाद्यचन्द्र p. 80. संसर्गं तु संसृजतोरनुगतिर्भूतम् ।
वि. चि. p. 157; विद्यमानं भावि वा धनमावयोः पुनर्विनयावपि साधारणमित्पाकारिका
इद्विरिच्यता वा संसर्गः । स्व. मयूख p. 140.

1475. संसृष्टत्वं च न येन केनापि किं तु पित्रा आत्मा पितृव्येण वा । यथाह सुहरपतिः ।
विभक्तो यः पुनः पित्रा आत्मा वैकव संस्थितः । पितृव्येणाधत्तं धीत्या स तत्संसृष्ट उच्यते ।
इति । मिता. on वा. II. 138; संसृष्टिता च पित्रादिनैव कर्तव्या नाप्येत विभक्तो यः पुनः
पित्रा इत्यादि पण्डितविरुद्धरपतिवचनादिति बहवः । अस्माभिस्तुपलक्षणं पित्रादिबहण-
मित्यादि ज्ञानेन प्रपञ्चितम् । स्व. य. p. 533.

1476. निभक्तं धनं पुनर्निर्भीकृते संसृष्टं तद्वत्पातसीति संसृष्टी । मिता on वा. II. 138.

1477. संसृष्टिनि येन संसृष्टी रिक्तवभाक् । मी. 28. 26; अपिवृद्ध्या विभक्तपितृद्वया
वा सह जीवन्तः पुनर्विभजेन् । अर्थशास्त्र III. 5.

The verses of Yāj. (II. 138-139)¹⁴⁷⁸ on succession to a deceased reunited person are understood by the Mit. to be an exception to the rules contained in Yāj. II. 135-136 laying down that the wife and others inherit the property of a person dying sonless. Therefore it follows that where a person reunites with his brother and then dies leaving a son not reunited with him, it is the son who will inherit and not the brother, though reunited. But if A separates from two sons B and C of whom B reunites with him and C does not and then A dies, then the reunited son B succeeds to A's interest and C takes nothing. This is expressly stated by the Vivādacandra p. 85 that relies on the Smṛtisāra¹⁴⁷⁹. The two verses of Yāj. (II. 138-139) are variously read and interpreted by the Mit. and other commentators and it is not possible nor quite necessary to set out all these readings and explanations. Acc. to the Mit. the two verses mean: 'in the case of a deceased reunited person, the (surviving) reunited member should give (to the posthumous son of the former) the share of the deceased but may take it himself if there is no son (but only a wife); but from among the reunited brothers, the full brother, if reunited, should similarly give to the posthumous son of the deceased the latter's share and (if there be no son) he should take it himself to the exclusion of reunited half brothers; a reunited half brother takes the wealth of the deceased reunited member (dying sonless) and not another half brother who is not reunited; a full brother, though not reunited, may take the wealth along with a half brother who is reunited but the latter will not alone be entitled'. In this interpretation the word 'asamsṛṣṭi' in the latter half of II. 139 has to be taken in two connections, once with 'anyodaryah' in the first half and then again with 'samsṛṣṭah' (in the 2nd half). This last word is to be understood in two senses, viz.

1478. संसृष्टिनस्तु संसृष्टी सोदरस्य तु सोदरः । दद्यादप्यहरेर्षांशं जातस्य च सुतस्य च ॥ अन्योद्वर्षस्तु संसृष्टी नाम्नोद्वर्षो धने हरेत् ॥ असंसृष्टश्चपि चाद्वयत्संसृष्टौ नाम्नमातुकाः ॥ वा. II. 138-139. The first is निष्पुधर्मस्तु 17, 17 also. अपराकं (p. 747) reads 'नाम्नोद्वर्षधने हरेत्' and आद्वयत्संसृष्टौ नाम्नमातुकाः. विन्यस्य, जितेन्द्रिय and विवाद-चन्द्र p. 84 read 'चाद्वयत्संसृष्टौ नाम्नमातुकाः'.

1479. Vide *Fakirappa v. Yellappa* 22 Bom. 101, 104 for the proposition that a reunited son has a preferential right of inheritance to a grandson who remains separate. Vide विवादचन्द्र p. 83 'यस्तु पिता पुत्रेणैव केनचित्संसृष्ट-स्तर्यांशं संसृष्ट एव युद्धीपाञ्चसंसृष्टी संसृष्टिनस्तु संसृष्ट इति वचनात्'... अत एव स्मृतिसारे यदा पितरं केनचित्पुत्रेणैव संसृष्टस्तदा तद्धनं संसृष्टिपुत्रो युद्धीपाञ्चसंसृष्टी विभक्तपुत्रः संसृष्टिनस्तु संसृष्टीपत्रिशेषेणाभिधानादियुक्तम्.

(1) full brother (with the preceding word *asamśṛṣṭi*) and (2) 'reunited' (with the word 'anyamātrjah'). Further, acc. to the Mit. we have to understand 'eva' after 'anyamātrjah'. Aparārka (p. 748) reads differently and he, Viśvarūpa and Śrīkaramiśra (Dayabhāga XI. 5-16) explain that a full brother though not reunited takes the whole estate and not the half brother though reunited with the deceased. The V. Mayūkha differs from the Mit. when it says that the word *aputrasya* (of one dying sonless) is not to be understood with Yāj. (II. 138). It derives two propositions from the first half of Yāj. II. 138, viz: (1) the wealth of one dying reunited is taken by the surviving reunited member or members; (2) in a competition between reunited full brother and reunited half-brother, the former takes the whole. The latter half of II. 138 is an independent sentence (and not joined with the preceding half as the Mit. understands) and applies where a reunited member dies leaving a wife who is pregnant but that fact being unknown the other reunited members divide the estate. In such a case if a son is born the surviving members should hand over to the son the share of the deceased reunited member. But if no such son is born then the survivors may take the estate. In II. 139 the Mayūkha holds that the words 'anyodarya' and 'anyamātrja' are not restricted to brothers only, but apply to a paternal uncle or his sons or other persons who were reunited, because their mother is also different from the mother of the deceased. The Dayabhāga discusses Yāj. II. 138-139 under the topic of succession to the separate property of a sonless man and its treatment of succession to reunited property is very meagre (vide XII),¹⁴⁸⁰ The V. P. p. 533 notices this and levels against Jīmūtavāhana the criticism that he got confused. Aparārka (pp. 748-749) seems to be of the same opinion as the Dayabhāga. The V. P. follows the Mit. and criticizes the explanation given by Śrīkara, Sm. G. and others (pp. 535-538). It says that the texts of Śaṅkha, Nārada and others conflict with the text of Yāj. II. 135 and that the order of heirs as to a reunited co-parcener is based on express texts and not on Yāj. II. 135¹⁴⁸¹ or logical reasoning. According to the V. P. the order of succession to a deceased reunited

1480. एतेन पत्न्याद्युपपन्नद्वहणाधिकारिण्ये सावधिकारापसरे वचनमिदं यवतंते इति व्याचक्षणां जीमूतवाहनो ज्ञानं एवेत्यवसेपम् । स्प. म. p. 533.

1481. तत्रैव दानीदुहित्रादिकसविरोधाद्विरोधापेक्षं संसृष्टनामविषयमिति कल्पते । विप्रकीर्णन्यायिकपत्नीदुहित्रादिकमोऽत्र वाचनिकमिष वाधते । अस्मिन् क्रमे करण-चिन्तापस्थाभावाद्वाचनिक एवापे क्रमः । स्प. म. p. 539.

person seems to be: (1-3) son, grandson, great-grandson; (4) reunited full brother; (5) reunited half brother and separated full brother; (6) reunited mother; (7) reunited father; (8) any other reunited member; (9) half brother not reunited; (10) mother not reunited; (11) father not reunited; (12) widow; (13) daughter; (14) daughter's son; (15) sister. The V. Mayūkhā gives the order as follows: (1) son if reunited; (2) son not reunited, though there may be reunited members (other than a son); (3) the parents if reunited in preference to other reunited persons (other than a son); (4) full brother if reunited; (5) full brother not reunited and half brother reunited; (6) half brothers and uncles, if reunited; (7) other male members reunited (in preference to wife though she be reunited); (8) wife if she be reunited; (9) full sister (or daughter according to another reading);¹⁴⁸² (10) any other sapinda who is nearest. It is to be noted that Manu IX. 212 prescribes a peculiar rule of succession for reunited co-parceners viz. that full brothers (not reunited) and full sisters of the deceased reunited co-parcener equally inherit along with half brothers that are reunited the wealth of the deceased. This verse of Manu has been variously explained by Kullūka, Aparārka p. 749, Sm. C. (II pp. 304-305), Nīlakaṇṭha, Vivādacandra (p. 83) and others.

It may be stated here that cases of reunion come very rarely before the courts.

1482. या तस्य मातुर्नी सा तु ततोऽं लभ्युमर्हति । अमपावस्य धर्मोऽसमापत्तिकरव
अ ३ बृह. q. by च्च. मयूख p. 152, स्म. च. p. 539. The स्म. च. says: कोचित् या
तस्य पुत्रित्वेति चेत्तुः । पुत्रित्वमनिष्ठांशमवस्यतः सपिण्डः. Vide परा. मा. III. p. 541
for similar words.

CHAPTER XXX

STRIDHANA

Stridhana (woman's property). This subject abounds with differing views on several topics that fall under it, as will be seen below.

The germs of the topic of *stridhana* can be traced to the Vedic Literature. As Sir Gooroodas Bannerjee remarks (in 'Marriage and Stridhana' p. 370), 'nowhere were proprietary rights of women recognized so early as in India; and in very few ancient systems of law have these rights been so largely conceded as in our own'. The wedding hymn in the *Rgveda* (X. 85) contains two verses¹⁴⁸³ (13 and 38) which indicate that gifts were sent to the bridegroom's house with the bride. They are: 'the bridal gifts of *Sūryā* that *Savitṛ* sent off have gone forth; in the *Aghās* (*Maghā* constellation) are struck the kine and in the *Arjuns* (*Phalgunī* constellation) is carried (the bridal gift); for thee in the beginning they carried about *Sūryā* together with the bridal gifts &c.'. *Sāyana* explains 'vahuṭu' as 'cows and other objects given for pleasing the girl to be married', while *Lanman* (*Harvard O. series vol. VIII p. 753*) renders it as 'bridal car'. *Sāyana's* interpretation suits the context much better. In the *Tai. S. VI. 2. 1. 1* we read,¹⁴⁸⁴ 'the wife (of the sacrificer) holds on (to the cart), for the wife is the mistress of the household gear'. *Manu IX. 11* uses the word '*pāriṇahya*' (household gear) and states that the wife should be entrusted among other matters with the supervision over it. *Jaimini*¹⁴⁸⁵, according to *Sābara*, refers to

1483. चूर्वाया वहुतुः मातासविता दमवावृजत् । अवाह हव्यमे वायोऽनुयोः पर्वुषाते ॥
हव्यममे पर्वुषद्वय चूर्वा वहुतुना सह । पुनः पतिभ्यो जायां द्वा अष्टे जलवा सह ॥ अ. X. 85,
13 and 38. These are almost the same as अघर्षवेद 14. 1. 13 and 14. 2. 1.

1484. पत्यन्वारभते पत्नी हि पारिणह्यस्वेष्टे । तै. सं. VI. 2. 1. 1 (in connection with आतिथ्येष्टे).

1485. स्ववत्तामपि दूर्ध्वयति । जै. VI. 1. 16; पत्नी नै पारिणह्यस्वेष्टे पत्यैव वत्तमु-
मते क्रियते । शबर. The printed text differs from the *Tai. S.* text. *पारिणह्य*
would mean 'nuptial gifts'. The *वि. र.* p. 517 explains *पारिणह्य* (in
Vas. 17. 46) as *पारिणह्यं परिच्छद् आदर्शकङ्कुणादि* (*paraphernalia, mirrors and*
bracelets). *वि. वि.* p. 142 reads 'कङ्कुलिकादि' (*combs &c.*). *वि. त्र.* (folie 160)
says: *पारिणह्यमुपकारः । आदर्शकङ्कुलान्मूलकरण्यकादिविरिति कल्पतवः । परिच्छेदमिति*
पाठाद्यौलक्यमिह.

this passage of the Tai. S. for establishing that women do own certain property. Medhatithi¹⁴⁸⁶ on Manu VIII. 416 (cited above on p. 452) quotes this passage of the Tai. S. and argues that if Manu VIII. 416 (saying that whatever a wife earns is her husband's) were literally understood passages like the one in Tai. S. would have no scope and that therefore Manu simply means that though women may be owners they cannot dispose of the property independently. It appears from these ancient passages that the properties, which in early days were held to be owned by women, were presents made at the time of marriage (such as ornaments and costly dresses) and household articles that are generally under the control of women and that the later smṛti rules about the devolution of stridhana in the female line arose from the peculiar nature of the articles over which dominion was conceded to women. This early state of things is indicated by some of the early sūtras. Āp. Dh.¹⁴⁸⁷ S. (II. 6. 14. 9) states the view of some predecessors (which Āp. himself does not approve) that the ornaments belong to the wife and also such wealth as came to her from her agnates (father, brother &c.). Baud. Dh. S. II. 2. 49 says that daughters get the ornaments of their mother and whatever else it is customary for them to get. Vas. 17. 46 prescribes that women (daughters) should divide the nuptial presents given to their mother. Śaṅkha (q. by Sam. Pr. p. 851) prescribes that in all forms of marriage ornaments and stridhana should be given to the girl. It may be that Manu VIII. 416 only gives expression to an ancient opinion, that the literal meaning of that verse was given up long before and that all that Manu meant was that during coverture a woman was subject to the control of the husband as regards her stridhana.

Three principal topics have to be discussed under stridhana viz. what constitutes stridhana, woman's dominion over her

1486. असति वा स्त्रीणां स्वाम्ये पत्न्यैवास्तुमन्त्रं क्रियते पत्नी वै पारिणयस्येते इत्यादि-
श्रुतयो विराट्प्रवृत्ताः स्युः । अत्रोच्यते । पारिणयमभिधानमेतत् । असती भर्तृवृत्तायां न
स्त्रीभिः स्वात्मन्येव यत्र कचिद्धनं विनिर्गोक्तवत् । मेधा. on मनु VIII. 416.

1487. अलङ्करो भार्यायां ज्ञातिधने चेति । आप. ध. सू. II. 6. 14. 9 : मातुलङ्कारं
दुहितृषु सौपद्र्यापके लभेरक्षय्यता । यो. ध. सू. II. 2. 49 : मातुः पारिणये क्रिये विनयेत्य् ।
वसिष्ठ 17. 46. The नि. र. p. 521 explains आप. as 'ज्ञातिधने चेति विवाहे यद्धनं
यौतकाकारं तस्यैव तदपि भार्याया एव'. The निता. on वाङ्. II. 117 seems to have
read this as a supplement to the preceding sūtra about the special share
of the eldest son. The द्वादशान IV. 2. 15 p. 62 and विवादचन्द्र p. 75 read
पारिणयके in Vas. and explain as पारिणयमन्तर्यं धनं or विवादकालीनं respectively.

stridhana and inheritance to stridhana. On each one of these topics great diversity of views prevails and the subject has become very complicated, as the Dāyabhāga remarks¹⁴⁸⁸.

Gautama contains three sūtras about the devolution of stridhana, but he does not define or describe it.^{1488a} Kaut. (III 2. p. 152) defines¹⁴⁸⁹: 'means of subsistence and what could be tied on the body (i. e. ornaments and jewellery) constitute stridhana. The means of subsistence should be fixed at 2000 (paṇas) as the maximum, while there is no limit to (what may be given) as *śbādhyā* (ornaments &c.)'. This may be compared with a verse of Kāt. (902) and a similar¹⁴⁹⁰ verse of Vyāsa viz. 'the father, the mother, the husband, brother and kinsmen should give stridhana to a woman according to their means up to two thousand (paṇas) except immovable property'. The Sm. C. and V. Mayūkha explain that this limit of 2000 applies to gifts made every year, but that if a gift is to be made once for all, then more may be given and even immovable property may be given.

The term stridhana literally means 'woman's property'. But in the ancient smṛti works the word was restricted to certain special kinds of property given to a woman on certain occasions or at different stages of her life. Gradually such kinds of property went on increasing in extent and value. We have to follow this evolution of the meaning and content of the word stridhana. One characteristic feature of stridhana from the times of Gautama downwards has been that it devolved on females in the first instance. The oldest extant definition of it

1488. दायधनमहममुक्तमपत्तः स्त्रीधनम् । दायधनम् IV. 3. 42 p. 99.

1488a. For exhaustive treatment of stridhana the following works may be consulted: Sir Gooroodass Bannerjee's 'Hindu Law of marriage and stridhana' (5th ed. of 1923) pp. 319-319, Dr. Jolly's T. L. L. on 'Adoption, Inheritance and Partition' (1885) pp. 236-270.

1489. वृत्तिरायचरं वा स्त्रीधनम् । परस्मिन्सहसा स्वाप्या वृत्तिः । आयचरानियमः । अर्थ-शास्त्र III. 2.

1490. पितृमातृपतिभ्रातृजातिभिः स्त्रीधने स्त्रियै । पद्माशक्त्या द्विसहस्राद् दायम् स्थवराहुते । कात्या. q. by स्मृतिच. II 281, परा. मा. III. p. 548, स्प. मयूख p. 154: द्विसहस्रः परो दायः स्त्रियै देयो धनस्य च । वत्स्य भर्ता धने दत्तं सा पद्माशक्त्यामस्तुयात् । स्वास q. by स्मृतिच. II. p. 281, अपराक्ष p. 752, दायभाग IV. 1. 10, बालम्बह्वी, स्प. मयूख p. 154. The परा. मा. III. p. 548 quotes वृत्तमपि 'दद्याद्देनं च तयोर्धनं श्रेयार्थं वा पविच्छति ।'

In Dharmaśāstra works is that of Manu¹⁴⁹¹ IX. 194: 'what (was given) before the nuptial fire, what was given on the bridal procession, what was given in token of love, what was received from her brother, mother or father, that is called the sixfold woman's property'. The Mit. on Yāj. II. 143 explains that the number six is intended to exclude a smaller number of the kinds of stridhana and does not exclude a larger number. In IX. 195 Manu appears to mention one more kind viz. 'amān-dheya' (gift subsequent)'. Nār. (dāyabhāga, 8) has the same six kinds as Manu IX. 194, but reads 'bhartrdāya' (the husband's gift) for Manu's 'what is given in token of affection', the latter being thus wider than Nārada's words. Yāj. (II. 143-44) enumerates¹⁴⁹² the several kinds of stridhana as follows: 'what was given (to a woman) by the father, mother, husband or brother or was received by her before the nuptial fire, or what was presented on her husband's marrying another wife (ādhivedanika) and the like—these are denominated stridhana; so also what is given by the cognate relations (of the woman), the *śulka* (fee), and gifts subsequent to marriage'. The Mit. and most of its followers read 'ādhivedanikādyam ca', while Aparārka and the Dāyabhāga read 'ādhivedanikam caiva', the difference being that if one reads as the Mit. does, several other kinds not expressly enumerated can be easily included under stridhana. But it should be noted that even without reading —'kādyam', Aparārka explains the verse in the same way as the Mit. does. Viṣṇu¹⁴⁹³ Dh. S. 17, 18 enumerates almost the same kinds of stridhana as Yāj., but omits the word 'ādya'.

Among smṛti writers Kātyāyana gives the most elaborate treatment of stridhana in about twenty-seven verses. He

1491. अथष्टयष्टपावृत्तिकं दत्तं च प्रतिकर्मणि । अतुमातुपितृयातं षड्विधं स्त्रीधनं स्मृतम् ॥ मनु IX. 194. कारवा. (394) acc. to द्वायभाग (IV. 1. 4 p. 72). वि. र. 323 and वि. वि. p. 138 had practically the same verse (reading प्रीतिः स्त्रियै). The Mitā. says, 'यत्तुमन्तुनोके ... स्त्रीधनम् षड्विधम् तन्मृतमन्तुनोके दत्तं नाधिकसेवापवृत्त्येव' । अथष्टयष्टपावृत्तिकं अतुमातुपितृयातं षड्विधं स्त्रीधनं स्मृतम् ॥ भारद् (द्वायभाग, 8).

1492. पितृमातृपतिअतुदत्तमथमनुपायतम् । आधिबेदुनिकाद्यं च स्त्रीधनं परि-कीर्तितम् ॥ यन्मुदत्तं तथा सुलकमन्वाधेयकमेव च । या. II. 143-144. On आधिबेदुनिकं चैव, अपराकं p. 751 says: यद्यपि आद्यार्थः । तेन च स्त्रीधनान्तरपरिग्रहः । तथा—आपयः पत्न्यः सगर्भाशिकाः, मातापत्यं समं हरेत् । स्वस्मादुद्वाद्यतुर्मातुः परिणातं स्त्रियो विभजे-त्य, अथमुपि यार्थोक्तमितिकं तत्स्त्रीधनमिति मन्वादिभिः परिकीर्तितम् । Against the reading चैव the वाल्म्यटीका remarks 'अथ आधिबेदुनिकं चैवेति प्राच्यभूतपाठो न युक्तः, एवमुक्त्यपि विपर्ययोः । मृततापत्तेः, यच्चान्तरपरिग्रहापत्तेः ।'

1493. पितृमातृपतिअतुदत्तमथमनुपायतमाधिबेदुनिकं यन्मुदत्तं सुलकमन्वाधेयकमिति स्त्रीधनम् । विष्णुधर्मसूत्र 17, 18.

defines several kinds of *stridhana* enumerated by Manu, Yājñ., Nār., and Viṣṇu (in all six) as follows¹⁴⁹⁴: what is given to women at the time of marriage before the nuptial fire is declared by the wise to be *adhyagni*¹⁴⁹⁵ *stridhana*. That again which a woman obtains when she is being taken (in a procession) from her father's house (to the bridegroom's) is declared to be *adhyāvahanika* *stridhana*. Whatever is given to a woman through affection by the father-in-law or mother-in-law and what is received by her at the time of doing obeisance at the feet (of elders) is said to be *priti-datta* (gift through affection) *stridhana*. That is declared to be *śulka* (bride's fee) which is obtained as the price of household utensils, of beasts of burden, of milch cattle, ornaments and slaves. Whatever is obtained by a woman after marriage from the family of her husband as also from the family of her (father's) kinsmen is said to be *anvādheya* (gift subsequent). According to Bhṛgu whatever is obtained by a woman after marriage through affection from her husband or from her parents is *anvādheya*. It may be noted that Kātyāyana's definitions of *adhyagni* and *adhyāvahanika* are wide

1494. विवाहकाले यस्त्रीन्यां दीयते तदग्निसेनिधी । तदध्यग्निकृतं सद्भिः स्त्रीधनं परि-
कीर्तितम् ॥ यत्पुनर्लभते नारी वीर्यमाया पितुर्दत्तात् । अथवावहानिकं चैव स्त्रीधनं तदुदाहृतम् ॥
पौर्या दत्ते तु यत्किञ्चित् श्रद्धा वा श्रद्धेरण वा । पादुकादिकं चैव धीतिदत्तं तदुच्यते ॥
सुतापस्त्रारणाणां दोष्टाभरणकर्मणाम् । सूर्यं लब्धं तु यत्किञ्चित्पुनः तत् परिकीर्तितम् ॥
विवाहापरतो यत्पुनर्लब्धं भर्तुकुलात् क्षिया । अन्वाधेयं तदुक्तं तु लब्धं वरपुत्रकुलात् तथा ॥
उभौ लब्धं तु यत्किञ्चित् संकारात् धीतिः क्षिया । भर्तुः पित्रोः सकाशात् पित्रोर्लब्धं सौदायिकं
तु नृ भूतः ॥ उभया कर्मणा वापि भर्तुः पितृपुत्रेभ्यः वा । अग्नौ सकाशात् पित्रोर्लब्धं सौदायिकं
स्मृतम् ॥ ऊरवा. 895-901. The *Smṛta* quotes all except two (viz. 898 and 900);
the *Doṣa* (IV) quotes all except 897, वि. र., (pp. 510, 524-525) reads all;
दीपकालिका, दापभाग IV, 1, 5 p. 73, कुम्भक on मय 9, 194, वि. वि. p. 138 read
वीर्यमाया हि (or तु) पितृकुलात् in 896; अथवाकं p. 751, चक. वि. p. 465, विवाहचन्द्र
p. 77, वि. वि. p. 138 read सत्तापस्त्राणिपुनः for धीतिदत्तं तदुच्यते; दीपकालिका,
व्यवहारसार p. 237, च. प. p. 543 read दोष्टाभरणकर्मणाम्; वि. वि. p. 139 and
च. मयूख p. 153 read वरपुत्रं स्वकुलात्तथा; मित्र., स. वि. p. 380 read वरपुत्रं पितृ-
कुलात्तथा. दापभाग reads भर्तुः सकाशात् पित्रोर्लब्धं.

1495. Some of the words deserve explanation. *अध्यग्नि* is formed as an
अव्ययीभाव from *अग्नि* + *अग्नि* acc. to वा. II, 1, 6 'अध्ययं विभक्तिस्मयी' and
means अग्नेः अपिपुत्र्य अग्निसेनिधी इत्यर्थः (वाल्मह्वी); अपिपुत्र्य अग्नेः अपिपुत्र्य धर्म-
पात्र्यां भार्या राग्यत एव. विवाहान्तरकरणं तत्पुनर्निमित्तं अस्तेति । सुतापिनी and वाल्मह्वी
(which relies on वा. I, 1, 39). Some read अथवावहानिकं, others read अथवावहानिकम्.
आवहन or आवहान means पितृकुलात् भर्तुकुलात्पुनः (नन्दन on मय IX, 194) तन्मय-
पौलस्त्यमथवावहानिकं, अन्वाधेयं means अग्नौ (विवाहात्परतः) आशीपते इति (नन्दन).
Instead of धीतिदत्त some read लब्धवाजितं (obtained by her loveliness) which
is explained by the वि. वि. (138) as लावण्यं वीर्यं नृपुत्रादि । तथा च पादुकादिना
शीलादिना चैव क्षिया श्रद्धादिना दत्ते तुनीयं स्त्रीधनमित्यर्थः ।

enough to include gifts made even by strangers on those occasions.

These definitions given by Kātyāyana have been accepted by all digestes including even the *Dayabhāga*.

"That is known as *sandānika* which is obtained by a married woman or by a maiden in her husband's or father's house from her brother or from her parents" (Kāt.). Some of the divergences in readings and in interpretation deserve to be noted. Acc. to the reading adopted by the Mī. *adhyāvahanika* includes all gifts made by any one when the newly married girl is taken from her father's house in a procession, while the reading adopted by the *Dayabhāga*¹⁴⁹⁶ and some others (*paikūl*) restricts the *adhyāvahanika* to gifts made by the father's or mother's family only. The V. R. (p. 523) includes under *adhyāvahanika* also the gifts made by the father-in-law and others when the girl is taken back to her father's house and the V. C. (p. 138) says that it is what is obtained at the time of '*durāgamana*'. The *Dayabhāga*¹⁴⁹⁷ (IV, 3, 19-20 p. 93) explains '*dohyābharana-karmīnām*' differently as 'the gratification paid by house-builders or goldsmiths to induce her to press her husband to engage them' or as Vyāsa says 'what is given to a woman to induce her (cheerfully) to go to her husband's house'. The Sm. C. and V. P. explain *sūka* as the price of the articles which the bridegroom was in the habit of presenting to the bride at the time of marriage or when he started a house.¹⁴⁹⁸ The V.

1496. वैतुकादिवैकशेषेण विदुमादुकुलाद् यद्गमते धनं भर्तृसह नौपमाना तदुध्यावाहनिकम् । द्वापभाग IV, 1, 6 p. 73. 'भर्तृसहाददा विदुकुलं वागते तदा चक्षुरादिभिर्दत्तं सध्यावाहनिकामिति मेधातिथिः तदुपि द्वाहं स्वापसाभ्याम् ।' नि. र. pp. 522-523; शिवमनकादे यदुत्तरेऽप्यसौ तदुध्यावाहनिकमियथे । नि. चि. p. 138. The printed editions do not contain the comment of मेधातिथि on मनु IX, 194 and the following verses.

1497. स्यादिकर्मिभिः शिल्पिभिरतर्ककरणाव भर्चाद्विद्वरणाथे सिद्धे यदुत्तरेऽप्यसौ तदुध्यावाहनिकम् । द्वापभाग IV, 3, 19-20 p. 93.

1498. The change in the meaning of *sūka* is interesting. One meaning of *sūka* is 'tax or toll on merchandise'. Vide *Viṣṇu Dh. S.* III, 29, Yāj. II, 173, 261, Vās. 19, 37, Pāṇini V, 1, 47 uses that word in that sense (तदस्मिन्पुत्रस्यापलायसूकापदा दीयते) and the *Kādikā* explains it as रत्नानिवेशे राजभोगः सूकः. Another sense is 'the fee paid to the bride or her parents by the bridegroom in consideration of marriage'. The word occurs in

Nir. (p. 468) states that *sulka* has two senses; (1) what is given as the price of the girl to the guardians of the girl which goes to the mother and brother (on her death); (2) what is given (by the bridegroom) as the price of the ornaments for the girl and of the household gear.¹⁴⁹⁹ Another verse of Kāt. (904) has been quoted by many writers, which restricts the literal sense of the word *stridhana*, 'over that wealth that is obtained by a woman by mechanical arts (such as spinning) or from a stranger through affection, the husband has ownership

(Continued from the last page)

Gaut, 28. 23 and in *Saṅkha* (*anyam sūktam vadhū*) q. by V. R. p. 321. In very ancient days there appears to have been a practice to offer in some cases considerable wealth to the father of the bride to induce him to give her in marriage. Rg. 1. 109. 2 refers to this: 'O Indra and Agni! I have heard that you are more liberal than even an unsuitable (or deficient) son-in-law or even a brother-in-law'. Yaska (VI. 9) in explaining this verse remarks that the southern people speak of the husband of the bride that is purchased as 'vijāmātr' (विजामाता इति शब्द इदं शिवायाः कतिपयविमाचकले अनुसमान इव वरोभिजेः). But this verse also shows that the bride's brother (*vyāta*) had to give wealth to his sister's husband. Vide H. of Dh. Vol. II. pp. 303-306 for passages about the sale and purchase of girls in marriage from ancient times right down to 1800 A. D. Though sometimes girls were purchased for marriage, popular feeling gradually asserted itself against this. In the Yacapurva (115. 23) Gādhī claims as the custom of his family one thousand horses of the best kind from Rciḥa when the latter preferred his suit for the hand of Gādhī's daughter (उचिरे नः कुले विविधं पूर्वैः संप्रवर्तितम् । एकतः स्वामकर्णानां पाण्डुराणां सरस्विनाम् । सहस्रं वाजिनोऽश्वकामिति विद्धि द्विजोत्तमः). Vide *Anuśāna* 4. 12 (for a similar statement) and 2. 31. Manu III. 31 forbids the taking of even a small gratuity through greed by the father when giving away his daughter in marriage and says that if he does so he would be guilty of the sale of his child and in III. 34 (almost the same as *Anuśāna* 4. 1-2) Manu says that when agnates do not appropriate to themselves the gratuity paid (by the bridegroom) for the bride but hand it over to the bride then it is not sale, but it is honour shown to the girl and is merely kindness to her. The Mit. defines *sulka* as the gratuity after getting which the girl is given. The V. C. p. 139 defines it as what is obtained from the husband on condition of furnishing household gear &c. 'पुत्रोपसकारादिकरणोपाधिना स्त्रिया सहपतितो यत्पदं तत्पुलकमित्यर्थः'.

1499. तत्र सुलकं द्विविधं कन्याधिकृतमूल्यत्वेन कन्यापदस्यो दत्तमेकम् । तन्मातुषामि मातृगामि वा । कन्याभूतनपुत्रोपकरणसूत्रत्वेन दत्तमपरं सुलकम् । तदाशुनिषेधश्च । अथ. नि. p. 468.

the rest is declared to be *stridhana*.¹⁵⁰⁰ The *prima facie* view (*pūrvapakṣa*) in *Jai. VI. 1. 12* urges that what a woman gets by serving cooked food or by cutting clothes does not belong to her. The gifts from strangers here referred to are other than those made by a stranger before the nuptial fire or at the time of the bridal procession. This definition makes it clear that what is obtained even from a stranger by a maiden or by a woman who is a widow at the time of the gift is pure *stridhana*. Devala says, 'maintenances (what was given for maintenance), ornaments, *sulka* (bride's gratuity), the profits of money-lending are a woman's *stridhana*. She alone is entitled to enjoy it and the husband is not entitled to enjoy it except in the case of distress'.¹⁵⁰¹ *Manu IX. 200* states, 'the heirs of the husband should not divide (among themselves) the ornaments worn by women during the lifetime of their husband; if they divide them they incur sin'. In the printed editions of *Manu* there is no comment of *Medhātithi* on this verse, but the *V. R.* (p. 509), *V. C.* p. 139, *Dāyatattva* p. 184 all say that acc. to *Medhātithi* even ornaments, though not donated expressly, become *stridhana*, if worn with the husband's consent.¹⁵⁰² According to the *Vaijayanti* such ornaments should be assigned to the share of the woman's husband so that she alone might put them on and that it is not meant that such ornaments are not to be taken into account at all at the time of partition.

1500. मासं शिल्पैस्तु यद्विधं स्त्रीया चैव यदुपयतः । भर्तुः स्वाभ्यं तदा तत्र शेषं तु स्त्रीधनं स्मृतम् ॥ कात्या. q. by द्वापभाग IV. 1. 19-20 p. 76, स्मृतिच. II, p. 281, परा. मा. III. 550, च्च. मयूख p. 154. द्वापभाग explains: अग्नय इति पितृनातृभर्तृकुल-स्वतिरिक्तात् यद्व्यं शिल्पेन वा यद्विजितं तत्र भर्तुः स्वाभ्यं स्वातन्त्र्यम्, अनापद्येति भर्ता प्रवीतुमर्हति तेन स्त्रिया अपि धनं न स्त्रीधनमस्मात्स्वयात्. 'यदनया भर्तास्वपणेन वा कर्तनेन वा धनमुपाजितं तेन यदयत इति । उपयते तदुपरया न स्वम्.' भाष्य on जै. VI. 1. 12.

1501. वृत्तिराभरणं धूर्त्वं लाभेभ्यः स्त्रीधनं भवेत् । भोजनी च स्वयमेवेद् यत्किञ्चिद्व्याप-
यति ॥ देवल q. by अपराक p. 755, स्मृतिच. II, p. 283, द्वापभाग IV. 1. 15 p. 75, वि. र. p. 512, च्च. मयूख p. 56, वि. चि. p. 141. Some read वृद्धिः (च. म. p. 545 does so). लाभ is variously explained. लभ्यते इति लाभः । एतदुक्तं भवति । धर्मव्याधि-
गीत्यर्थं व्रतदौ यद् स्त्रिया लभ्यते तदपि स्त्रीधनमिति । स्मृतिच. II, p. 283; च्च. म. p. 545 and मयूररत्न follow this. 'लानां वन्द्युषो लभ्यम्' वि. र. p. 512, वि. चि. p. 141; 'वृत्तिर्जीवनार्थं विधादिवृत्तं लाभो वृद्धिः' च्च. मयूख p. 156.

1502. पत्न्यौ जीवति यः स्त्रीभिरलङ्कारो धृतो भवेत् । न तं भजेत्य द्वापादा भजमानाः
पतन्ति ते ॥ मनु IX. 200, which is almost same as विष्णुधर्मसूत्र 17. 22. पराशरवृत्तानि-
(ज्ञानेना) । अपद्व्योपलङ्कारो यो मण्डनार्थं धृतः सोपि द्वापादेन वर्तय्य इति मेधातिथिरिति
यत्काशः । वि. र. p. 509; पराशरव्योपि तद्वृत्तया परिशिष्टोपलङ्कारसमाप्त्यैव भाषायाः स्त्रीयो
भवतीति मेधातिथिः । वि. चि. p. 139 and द्वापतत्त्व p. 184.

Saudāyika is not a special kind of *stridhana*. It is rather a comprehensive term for several kinds of *stridhana* as the definition given by Kāt. shows and as the V. C. (p. 139) expressly states¹⁵⁰³. It is almost synonymous with *stridhana* in the technical sense. Acc. to most writers, it is wealth received by a woman, whether as a maiden or as a married woman, in her father's or husband's house from her parents or relatives of the father and mother. The Sm. C. II. p. 282 and V. R. p. 511 hold that *saudāyika* is all wealth obtained by a woman whether as a maiden or as a married woman from her mother, father or paternal relatives only, while the *Dāyabhāga* IV. 1. 23 pp. 76-77 and V. C. hold that *saudāyika* includes also all property donated by the husband except immovable property, which latter she cannot alienate even after her husband's death. There is a verse of Vyāsa¹⁵⁰⁴ that defines *saudāyika* similarly, 'whatever is obtained by a woman as a maiden at the time of marriage and after marriage from the house of her father or husband is termed *saudāyika*.' The word '*saudāyika*' is derived from '*sudāya*' and means, according to the *Dāyabhāga* IV. 1. 22 p. 76, 'received from affectionate kindred'. The *Amarakośa* says that '*sudāya*' means 'gifts of *yautaka* and the like' and that *saudāyika* is merely a derivative without change of meaning.¹⁵⁰⁵

Another word requiring explanation is '*yautaka*'. It occurs in Manu IX. 131, 'whatever is the *yautaka* of the mother goes to the maiden daughter' (and not to the married daughter or son). So *yautaka* seems to be a synonym for *stridhana* in

1503. एवं स्त्रीधनानि भवन्ति । एतदेव स्त्रीणां सौदायिकं तथा च कात्यायनः । ऊहया ... धनेत् । पत्युरित्येवमपि द्यौ इति सम्बन्धः । ... मातुरित्युपलक्षणम् । त्वेन जन्मया वा ऊहया वा दितुमो वा ताकुलतो वा पतिकुलतो वा पत्युर्थं तत्सर्वं तस्याः सौदायिकमित्यर्थः । वक्ष्यमाणवृत्त्यादिकमप्येतत्सम्बन्धः । वि. वि. p. 139 ; द्वापभाग IV. 1. 21 reads भर्तुः सकाशात् पित्रोर्वा, 'भर्तुः सकाशादिति कल्पतर्वादौ पठः' स्व. म. p. 543.

1504. पत्न्यया विवाहे च विवाहात्परतश्च यत् । पितृभर्तृगृहात्प्राप्तं धनं सौदायिकं स्मृतम् ॥ व्यास. q. by स्मृतिच. II. p. 282, स. वि. p. 378.

1505. सुदायसम्बन्धिभ्यो लुब्धे सौदायिकम् । द्वापभाग IV. 1. 22 : यौतकादि तु यत्रैव सुदायो वरणे च तत् । अमरकोशः, ननु 'सौदायिकं तु यत्रैव सुदायो भरणे च तत्' इति निष्पत्त्युपादात् कथं सौदायिकशब्दोऽयं प्रयुक्तः । स्वार्थे लङितान्तपेयवन्वयम् । स्मृतिच. II. p. 282. The quotation from Amara seems to be corrupt as printed by Mr. Gharpure, the Mysore edition correctly reads यौतकादि तु यत्रैव सुदाय इति निष्पत्त्युपादात् (vol. III. 2. p. 635). 'सुदाय एव सौदायिकं स्वाधिकडम् । स्वदायतो लब्धमिति वा । स्वदापो सुदाय ! सम्बन्धिभ्यो लुब्धमिति तु प्राज्ञः' बालभट्टी ७५ पृ. II. 143.

the technical sense. The Sm.¹⁵⁰⁶ C. II p. 285, Madanaratna (folio 105 b) and V. Mayūka remark 'yautaka is that wealth that is received as a gift from anybody by a woman while she is seated together with her husband at the time of marriage and the like'. It is derived from *yuta* (joined). It should, however, be noted that Yaj. II. 149 employs the word *yautaka* as an adjective in the sense of 'separated' and that Medhātithi on Manu IX. 131 explains 'yautaka' as the separate property of a woman, her *stridhana*. The Sm. C. II. p. 285 remarks that Devasvāmi derived 'yautaka' from 'yu' (to separate) and held it to mean 'wealth obtained from the family of the woman's father which is separate in its characteristics'. The V. C. p. 142 and Vivādacandra p. 74 read 'yautuka' and the former explains it as gifts from the father and the like at the time of marriage. The Dāyatattva (p. 186) states that both forms 'yautaka' and 'yautuka' are in vogue and relies on Vācaspati and Rāyamukuta in support.

Kauṣ. (III. 2. p. 153) names *śulka*, *anvādheya*, *ādhivedanika* and *bandhudatta* as kinds of *stridhana*.

The above are the principal *smṛti* texts on the question of what constitutes *stridhana*. It will be seen that the *smṛtis* only enumerate and describe certain kinds of property as *stridhana*, which word is not used by them in the etymological sense of 'all kinds of property possessed by a woman'. They do not attempt a comprehensive definition of *stridhana*. From the texts of the *smṛtis* it follows that *stridhana* was a technical term, which at first included only six kinds of property, then nine and ultimately by the time of Kātyāyana it included all property (whether movable or immovable) obtained by a woman, either as a maiden or at marriage or after marriage.

1506. यौतकं विवाहदिकाले एकदासनेपविशाम्यं लभ्यम् । अत्र एवौक्तं निषण्डु-
कारेणुतपोर्षितकामिनि । मदनरत्न folio 105 b, अ. मयूक p. 158 quotes the मदनरत्न,
वि. १. p. 517 explains 'यौतकमत्र परिणयनकाले विवाहदिभिः किंचिद् वृत्तम्' ; परा. मा.
III. p. 552 explains as पितृकुललभ्यम्. यौतकं समानासनोपवेशनपर्याप्तप्राप्तप्राप्तप्राप्त-
विवाहादौ येन केनचित्समिति धनं तद्वधुरपोर्षितं पुत्रपोर्षितकं मतमिति निषण्डुकारोक्तम् ।
... द्वेषस्यामी तु पितृपुत्रादौ भर्तृपुत्रादौ व्यापैलपा प्रयुक्ततया यौतकं मातृधनं (प्रातृधनं ?)
नेषण्डु । तद्विषयम् । पञ्चदशस्यापि कल्पनाभावत्वात् । स्मृतिच. II. p. 285. Vide स्व. य.
p. 548 for most of these being brought together. स्पष्ट. नि. p. 463 explains
यौतकं as मातृकुललभ्यम्. 'यौतकशब्दः पुत्रभावेन च स्त्रीधने । तत्र हि तस्या एव केवलतायाः
स्वाभ्यम् । अग्रे तु सौदायकमेव तत्सम्बन्धस्तीधने तच्च हि तस्याः स्वाभ्यम् । मेधा. on
मनु IX. 131 : आचर्यतिमिभरायमुकुटपूताद् यौतकं यौतकमपि साधु । परिणयनकालः
परिणयनपूर्वापरिपूतकालः स च इति आह्वयमप्यभिधादनात् विवाहदन्ते विवृतः । द्वाप-
तत्त्व p. 186.

from her parents or the family or relatives of the parents or from the husband and his family (except immovable property given by the husband) and that what was obtained by a woman *after her marriage* by her own labour or from strangers did not become *strīdhana*. Most *smṛtis* employ the word 'datta' (donated), but Kāṭ. and Vyāsa sometimes use the word 'obtained' (*prāpte* or *labdha*), which is ordinarily wider than 'datta'. But it is clear that the commentators do not expressly say that 'obtained' includes 'inherited', though from their general remarks to be quoted below it is arguable that they probably included inherited property under property obtained.

This is *strīdhana* in a technical sense.

It is now necessary to find how *strīdhana* was defined by the several commentaries and digests that are held authoritative in the several schools. This is a most important matter for practical purposes, since the courts have to follow the opinions of commentators¹⁵⁰⁷ that are authoritative in each school and are not at liberty to put their own construction upon ancient *smṛti* texts, if such construction would run counter to the express opinions of the authoritative commentators. First then comes the *Mitākṣarā*. Its gloss on Yāj. II. 143 may be translated as follows¹⁵⁰⁸: 'whatever is given by the father, mother, husband and brother; what was presented by the maternal uncle and the like at the time of marriage before the nuptial fire; and *Ādhivachanika*, that is, gift made (by the husband) at the time of marrying a second wife as will be described subsequently in the words 'he should give to the wife that is superseded' (Yāj. II. 143); by the word 'ādya' (meaning 'and the like') is indicated property that is obtained by succession, purchase, partition, seizure or finding—all this is declared by Manu and others to be *strīdhana*. The word *strīdhana* is employed here in its etymological sense and not in a technical sense, since, when the etymological sense is possible, it is improper to resort to the technical sense.' The *Mitākṣarā* expanded the

1507. Vide *Collector of Madras v. Mooloo Ramlinga* 12 Moo. 1. A. 397, 436, quoted in *Atmaram v. Bajirao* 62 I. A. 139 at p. 143.

1508. पित्रा मातुषा पत्या भ्रात्रा च यद्वत्तं यच्च विवाहकालेऽप्राप्तमित्यत्र मातुलादिभिर्दत्तं, अपिचरद्विभक्तं अधिवेदननिमित्तं अपिचरद्विभक्तं दद्यादिति वक्ष्यमाणम् । अथग्रन्थेन रिचयथापसंविमानपरिग्रहाभिमन्यमानं एतत्स्वीयं सम्पत्तिभिरुक्तम् । स्वीयनशब्दश्च योगिको न पारिभाषिकः । भोगसम्भवे परिग्रहाया अपुत्रकत्वात् । मित्रा. on यज. II. 143. As against the last sentence of the *Mit.* may be compared the maxim (*nyāya*) 'कविर्धर्ममवहरति' (relied upon in परा. मा. I. 1. p. 300).

definition of strīdhana so as to include under it the five kinds of property of which a man becomes owner in various ways according to Gautama X. 39. The result is that, according to the Mīl, property of any description belonging to a woman becomes strīdhana even if it be inherited by her from a male as a widow or as a mother or even if it be obtained at a partition by a wife or mother (acc. to Yāj. II. 115 or 123 respectively). The same interpretation of the word 'ādyā' has been accepted by several works, such as the Madanapārijāta (p. 671), the S. V. (p. 379), V. P. (p. 542), the Bālabhāṭṭi. Aparārka without reading 'ādyā' gave the same explanation of 'ca' as stated above (on p. 773). On the other hand, the Dāyabhāga gave a restricted meaning to the word. Jimūtavāhana reads Yāj. II. 143 as 'ādhipcedanīkam caiva', quotes the verse of Devala (in note 1501), remarks that strīdhana is not restricted to the six kinds of Manu (IX. 194) but includes other kinds mentioned by other smṛtis and finally¹⁵⁰⁹ observes: 'that alone is strīdhana which a woman has authority to donate, sell or enjoy independently of her husband's control'. The Dāyabhāga does not expressly state the kinds of property that a woman can dispose of independently of her husband, but immediately after defining strīdhana it quotes the texts of Kṣt. (about earnings from mechanical arts and gifts from strangers) and Nār. (IV. 28), 'what has been given to a wife by her loving husband, she may spend or give away as she likes even after his death excepting immovables'. From this it follows that, according to the Dāyabhāga, all gifts from relations except a gift of immovable property made by the husband and gifts from even strangers made before the nuptial fire or on the bridal procession constitute strīdhana, but property inherited by a woman or obtained on partition, gifts from strangers (other than the two kinds noted above) and property acquired by her by mechanical arts or by her labour are not strīdhana. The Dāyatattva closely follows the Dāyabhāga.

The Sm. C. does not give a definition of strīdhana, but it does not adopt the interpretation of the word 'ādyā' given by

1509. तदेवमप्यवस्थितसंस्कारक्षीपनक्षीर्तमात्रं पदसंख्या विनिश्चिता किं तु क्षीपन-
क्षीर्तनमात्रपराणि वक्ष्यन्ति । तदेव च क्षीपने पदं भर्तुः स्वातन्त्र्येण दानाधिकारभोग्यान्कर्तुम-
धिकरोति । ... स्वातन्त्र्येण भर्तुर्दत्तमात्रे स्त्रिया दानाधिकारः । तदाह वारहः । भर्ता यतिन
पदार्थं स्त्रिये तस्मिन्मृत्योर्न तत् । सा वधाकाममश्नीयात् इत्याह । स्वातन्त्र्येण । भर्तुर्दत्तविलो-
पनात् भर्तुर्दत्तस्यावधारणे अप्यत्र स्वातन्त्र्येणैव भवति । दायमान IV. 1. 18 and 23.
Bṛīhann says 'क्षीणी स्वातन्त्र्येण विनिर्वाच्ये क्षीपनमित्यर्थः ।'

the Mit. Therefore it may be said that it is in line with the *Dāyabhāga*. The Par. M. III. p. 547¹⁵¹⁰ (another Madras authority) appears to follow the Mit., since it says: "ādya" includes 'ādhiśādanika' and what is acquired by inheritance, sale and the like." The *Vivādacintāmaṇi* (the leading authority in Mithilā) does not define *strīdhana* in general, but enumerates the several kinds of *strīdhana* described by Manu, Yaj., Viṣṇu, Kāt., and Devala and so is on a par with the *Dāyabhāga*. The V. Mayūkha divides *strīdhana* into two kinds, *pārībhūṣika* (technical) and *apārībhūṣika* (non-technical). The former comprises properties expressly stated to be *strīdhana* by the sages, while the latter includes all other property belonging to a woman (except what is called technical) and acquired by her by partition or cutting (sewing or other mechanical arts).¹⁵¹¹ This division is peculiar to the V. Mayūkha. The *Viramītrodaya* (the paramount authority in the Benares school) agrees with Mit. as stated above.

It is beyond the scope of this work to go deeply into modern caselaw. But it is necessary to show how the Indian Courts have in modern times dealt with *strīdhana* as defined by the commentators. It may be said at once that the inclusion by the Mit. of property inherited by a woman or obtained at a partition under *strīdhana* has been totally discarded by the Privy Council for all provinces in India except Bombay¹⁵¹². A woman may inherit property from a male, such as from her husband, father or son or she may inherit property from a female, that is, from her mother, daughter &c. Both these kinds of property

1510. अथवाऽप्येन अन्वयात्तद्विज्ञानात् (रिश्त?) कयादिमाते च । परा. म. III. p. 247.

1511. यत्तु विभजेरन्तुताः विधोः कर्त्तव्यं रिश्तस्यैव सममिति याज्ञवल्क्योक्तं तत्पारिभाषिकतिरिक्तविभाषकतनादित्थपरम् । मय. मयूख p. 160.

1512. Vide *Shoo Shankar v. Debi Sahai* L. R. 30 I. A. 203 (a case from Allahabad) for the proposition that according to the law of the Benares school even property inherited by a woman from a female is not her *strīdhana* and does not pass to her heirs. The principal grounds for the decision were that as regards property inherited by a female from males the rule deducible from the gloss of Vijñāneśvara had already been discarded and that even as to property inherited from a female the same rule had been applied in most High Courts (p. 208). Vide also *Balwantrao v. Baji Rao* L. R. 47 I. A. 213, 223 where the Privy Council approves of the Bombay High Court's decision in *Bhan v. Raghunath* 30 Bom. 229 that a daughter succeeding to her father takes the property absolutely as *strīdhana* in the Bombay Presidency.

are stridhana according to the Mit., but the Privy Council has held as to both these kinds that they are not stridhana; e. g. if a daughter inherits property from her father or inherits the stridhana property of her mother, it does not become her stridhana, that on the death of the daughter, the property does not pass to her heirs, but to the next heir of the person from whom she inherited it. The Bombay school makes a distinction. If a woman enters a family by marriage and then inherits to a male of that family (as e. g. a widow succeeding to her husband, a mother to her son or a predeceased son's widow to her father-in-law), the property she inherits is not her stridhana, she takes only a limited estate in it and on her death it passes to the next heir of the male from whom she inherited. But if a woman inherits from a male belonging to the family in which she was born (e. g. a daughter succeeding to her father, a sister to her brother) or if a woman inherits property from a female, the property so inherited becomes her stridhana (in Bombay). As to property acquired by a wife or mother on partition¹⁵¹³, it has been held by the Privy Council that it is not stridhana even in provinces governed by the Mitākṣarā (including Bombay).

Kāt. (903) declares:¹⁵¹⁴ 'whatever was given to a woman for wearing only on some occasion (or on condition) or with fraudulent intent by the father, brother or husband is not held to be stridhana.' The idea is that if the father or husband gives some ornament to his daughter or wife for wearing on some special occasion (*upādhi*) or if a father or husband in fraud of his co-parceners gives some family property to his daughter or wife it cannot become stridhana.

Dominion over stridhana.—What is stridhana and what dominion a woman has over stridhana depend on three things, viz. the source of acquiring the property, her status at the time of acquisition (i. e. whether she was a maiden or a married woman whose husband was living or a widow), the school of law by which she is governed. Certain verses of Kāt. and Nār. are the principal texts on this subject. Kāt. (905-907, 911)

1513. Vide *Debi Mangal Prasad v. Mahadeo Prasad* L. R. 39 I. A. 121, 131-132 (about the share of immovable property on partition not being stridhana and not passing on her death to her stridhana heirs).

1514. यत्तु उत्तरादौ धर्मनिवेष्टमायुषिना अलङ्कारं विदत्तं यच्च दायादा-
दिवज्जनार्थं दत्तं तल्लीयते न भवतोयाह कायायनः । यच्च सोपाधिकं दत्तं यच्च योगपक्षेण
या । यित्रा भ्रात्रापया पया न तल्लीयन्निवते । स्मृतिच II. p. 281. The verse is
quoted by परा. मा. III. p. 549, यद्. मयूख p. 154 (reads यच्च सोपधि यदुत्तं).

says:¹⁵¹⁵ 'on obtaining wealth of the *saudāyika* kind it is declared (lit. desired) that women have independent power over it, since it was given by them (the kindred) as support (or maintenance) in order that they (women) may not be reduced to a terrible (or wretched) condition. It has been declared that women always have independence in *saudāyika* property as regards sale or gift at their pleasure and even in immovables (if *saudāyika*). A woman, when her husband is dead, may deal with the gift (of movables) given by the husband as she pleases; but she should preserve it as long as he is alive or she may spend it on his family. Neither the husband nor the son, nor the father nor the brothers have power to use or alienate the *stridhana* of a woman'. The verses of Kāt. about property acquired by labour or about the gift from strangers through affection and that of Nārada about the gift of immovable property made by the husband have already been quoted. From these texts it follows that a Hindu woman during her maidenhood¹⁵¹⁶ could dispose of her *stridhana* property of every description at her pleasure, that during her widowhood she could dispose of every kind of *stridhana* including movable property given by the husband but not immovable property given by him and that a married woman whose husband was living could dispose of at her pleasure only that kind of property called *saudāyika* (i. e. gifts from relations except those made by the husband). Under modern decisions the distinction between *saudāyika* and

1515. सौदायिकं धनं याप्य स्त्रीणां स्वातन्त्र्यमिच्छते । परमात्तदाश्रयं सौदायिकं तद्वस्तुपञ्जीकृतम् ॥ सौदायिकं सदा स्त्रीणां स्वतन्त्रं परिकीर्तितम् । विक्रये चैव दाने च यथेष्टं स्वातन्त्र्यमपि ॥ भर्तृदायं मृतं पत्यो विनश्येत् स्त्री यथेष्टतः । विद्यमाने तु संरक्षेत् शपथेन कुलद्वयधा ॥ न भर्ता नैव च सुता न पिता भ्रातरौ न च । जगदने वा विमर्श वा स्त्रीधने यथाविष्णवः ॥ कात्या. ५. अथार्क प. 752 (except भर्तृदायं &c.), स्मृतिच. II, p. 282, द्वापमान IV. 1. 22 and 24 and २५. मयूख p. 155 (except भर्तृदायं &c.), वि. र. pp. 310-11, 314 (all); वि. वि. pp. 139-140. On आश्रयं वि. र. says, 'आश्रयं परमात्तदाश्रयता तेन परमादिकं विद्याभाषाद्व्याख्या न भवेत्तदर्थम्' (p. 311); 'आश्रयं सौदायिकं अतुल्यार्थम्' (अशुद्धम्). On सदा the स्मृतिच. says 'परयो विद्यमानेपि स्वातन्त्र्यमुक्तं सदैवविधानात्'. On भर्तृदायं the स्मृतिच. says 'भर्तृदायो भर्तृदत्तम् । तन्मरणे तु तदन्तराश्रयकपाद्वधेन विद्यमाने पत्यो स्वातन्त्र्यमुक्तम् । विद्यमाने तु संरक्षेदित्यभिधानात् । संरक्षेज्जर्तुदत्तं भवतुज्ञाया विना न विनश्येद्विपर्ययः'. वि. र. p. 311 and वि. वि. p. 140 take भर्तृदायं to mean husband's own property and the former says that बलादुप and पारिजात explained it as स्त्रीधनं given by the husband.

1516. So long as a Hindu maiden is a minor she cannot alienate her property or dispose of it by will; only her guardian can alienate it for purposes laid down in Hunsoman Pershad's case; vide 6 Moo. I. A. 393 (cited above on p. 449).

non-saudāyika is retained,¹⁵¹⁷ but the distinction between saudāyika given by the relations and that given by the husband is not kept.¹⁵¹⁸ Now the woman's power to dispose off as she likes depends on the question whether the gift was meant to pass an absolute estate or a limited estate even if the husband was the donor. During marriage when the husband is living her dominion depends under modern law upon the character of the stridhana. If it is of the kind called saudāyika she can dispose of it by sale, gift or will as she likes without her husband's consent; but as to other kinds of stridhana property (such as gifts from strangers, property acquired by mechanical arts or property inherited) she cannot dispose of it without her husband's consent. If she disposes of it without such consent the alienation is void. According to the D. B. IV. 1, 20 property acquired by a married woman by mechanical arts or by gift from a stranger is subject to the husband's dominion during his life and may be taken by him even when there is no distress. No one else (except the husband) has got control over even such stridhana. After the husband's death, she can dispose of even non-saudāyika stridhana as she likes. But even as regards saudāyika the texts concede certain rights to the husband in certain circumstances. Yaj. II. 147 says: 'the husband is not liable to return to the wife her stridhana taken (i. e. used) by him in a famine, for (indispensable) religious acts, in disease, or when imprisoned (by the creditor or by the king or an enemy).'¹⁵¹⁹

1517. Vide *Bhanu v. Raghunath* 30 Bom. 229 (where it was held that property inherited by a woman from her father could not be bequeathed by her without the consent of the husband who survived her). Bequests to a woman are on the same footing as a gift for the purposes of stridhana. Vide *Damodar v. Purmanandas* 7 Bom. 155.

1518. Vide *Shailig Ram v. Charanjit Lal* 57 I. A. 282, 289.

1519. दुर्मित्रं धनं कार्यं च स्वाधौ संपत्तिरोपके । सुहीनं वीर्यं भर्ता न विद्वे दातु-
मर्हति ॥ या. II. 147, on which Mitra. says: यकारान्तरेणापहस्य इच्छात् । अर्जुन्यतिरेकेण
जीवन्त्याः स्त्रिया धनं केनापि दायादेन न दद्यात्तस्यम् । some like य. p. 546 read
नाकामो दातुः, नि. र. p. 513, नि. वि. p. 141. मित्रावच्छेद p. 73 regard संपत्तिरोपके
as an adjective of स्वाधौ, 'संपत्तिरोपकेति स्वाधौविशेषणं कार्मास्तुष्टामवाधके इति तदर्थः ।
नि. वि. १, 'नाकामो दातुमर्हतीत्यपि दारिद्र्यादिवृत्तदानासामर्थ्यं बोध्यम् । सति तु सामर्थ्ये
दुर्मित्रादिवृत्तीतमप्यवश्यं देयम् । एतावतैव वचनोपपत्तौ सामर्थ्येनदानमिच्छयेत्यस्य काय-
चित्तुमर्हत्वात् । पतिव्रतणादायपि यत्तुरेव पत्नीधनव्रतणाधिकारः । पतिदानं चेष्टया नाप-
द्येति ज्ञेयम् । य. p. 546.

Kāt. (914)¹⁵²⁰ has a similar verse which says that he may return stridhana wealth if he chooses to do so when it is used by him in a disease or in calamities or when harassed by creditors. Kaut. (III. 2 p. 152) is closely similar to Yāj. and adds that the woman can spend it without blame for the maintenance of herself, her son and daughter-in-law or when the husband has gone abroad without making provision for the maintenance of these. Kaut. (III. 2. p. 152) further provides¹⁵²¹ that there should be no complaint (by the wife) as regards the expenditure of stridhana made more than three years before by joint action of the husband and wife when they have given birth to two children (or to twins) and when the marriage has been in the most approved forms (*brāhma* and the other three), that when stridhana has been expended by (the husband and wife) that are married in the *gāndhārva* or *āsura* form both should be made to restore it with interest and that what is expended when the marriage is in the *rūkṣasa* or *pañṭaka* form the expenditure of stridhana should be dealt with as theft. The meaning of 'mithunam prajātayoḥ' and 'trivarsopabhuktam' in Kaut. is not quite clear. It is probable that Kaṭilya lays down a rule of limitation. If more than three years are allowed to pass without complaint, then no complaint made later (than three years after the expenditure) would be entertained. So also if there be no children of the marriage and the husband expends stridhana without objection by the wife then also no complaint would be entertained as the restraint on alienation of stridhana by the husband and wife was meant for the benefit and advancement of the children. None of the later smṛtis like those of Yāj., Nār. or Kāt. makes these distinctions and so Kaut. probably represents an early stage in the evolution of the husband's dominion over stridhana. These later smṛtis hold that the husband and wife may be entirely separate as regards their properties and as a general rule the husband's debts are not binding on the wife's properties nor are the wife's separate debts binding on the husband or his properties (Yāj. II. 46,

1520. अवापितं स्वसनस्य च धनिकर्षोपपन्नितम् । ज्ञात्वा निवृत्तं यथेत्या दद्यादास्ते-
ष्वप्यतु सः । कारण. ५. by अथर्वक p. 755, स्मृतिच. II. p. 283, वि. र. p. 513,
वि. वि. p. 141; तद्गतमप्युपस्त्रुषाभर्तुनि यथासायतिविधाने च भार्याया मोक्षमदोषः । यति-
रोधकप्राधि-दुर्भिक्ष-भयवदीकारे धर्मकारे च वक्तुः । अर्थशास्त्र III. 2 p. 152.

1521. सम्भूत वा दम्पत्योर्मिथुने यजातयोश्चिन्तयोपपन्नं च धनिकेभ्य विवाहेषु नाह-
तुर्नीत । गन्धर्वोपपन्नं सद्द्विकृतमभयं दद्यात् । राजसौप्तिकोपपन्नं स्तेनं दद्यात् ।
अर्थशास्त्र III. 2. p. 152.

Vism. Dh. 8. VI. 31-32). But the same smṛtis make it clear that under certain distressing circumstances the wife's separate property was liable for the maintenance or debts of the husband. The Mit. expressly states^{1521a} that if the husband uses his wife's strīdhana under any other circumstances (than those specified by Yaj. II. 147 and Kat.) then he has to return it, that no relation except the husband has any right to use a woman's strīdhana during her lifetime even in distress or disease &c. and relies on Manu VIII. 29 which requires the righteous king to award the punishment for theft against such relatives as appropriate the wealth of women. The Sm. C. and V. Mayūkha follow the Mit., but the V. R. and V. C. hold that Kātyāyana's verse applies not only to the husband, but also to the son, father and brothers of the woman. Kat. (912-913) provides^{1521a} that if any one of the four persons (q. in n. 1515 above) forcibly consumes strīdhana he should be made to return it with interest and should be also liable to fine (or punishment) and that if any one of these consumes strīdhana amicably after securing her consent then he would be liable to return only the principal amount, when he becomes well-off (i. e. able to pay). Devala¹⁵²² also states, 'if the husband makes a gift of strīdhana without cause or enjoys it, he must pay it back with interest, but he may use the strīdhana of his wife for relieving the distress of a son (and also of the family, acc. to V. Mayūkha). Kat. (908)¹⁵²³ adds a special rule, 'if the husband has two wives and he does not reside with one of them (i. e. neglects her), he should be forcibly made to return (the strīdhana of his neglected wife) by the king even though she bestowed it upon him through affection.' The texts of Kat., Devala and Nār. quoted above about the dominion of the woman over her strīdhana and about the husband's power over it are

1521a. यदि श्वेतरो शोषां जीधनं भक्षयेद् बलात् । सवृद्धिकं स दाप्यः स्याद् वृद्धे चैव समाप्नुयात् । तदेव पथवृत्तात् भक्षयेन्मित्रिपूर्वकम् । मूलमेव पदाप्यः स्याद्यद्यसी धनवान् भवेत् ॥ कात्या. q. by अपराकं p. 753, द्वापभाग IV. 1. 24 p. 78, स्मृतिच. II. p. 282.

1522. इथां मोक्षे च जले च क्षिपे दद्यात्सवृद्धिकम् । इधार्तिवरणे वापि जीधनं भोक्तुं नर्हति ॥ देवल q. by स्मृतिच. II. p. 283 (इधार्तिवरणे कुटुम्बोपलक्षणार्थम्), अपराकं p. 753, च. म. p. 156.

1523. अथ चेत्स द्विभार्या स्यात्त च तां नजते दुः । पीत्वा निवृद्धमपि चेत्पतिदाप्यः स तद् बलात् ॥ कात्या. q. by अपराकं p. 753, द्वापभाग IV. 1. 24 p. 78, स्मृतिच. II. p. 283. The च. m. p. 156 ascribes this verse to देवल.

authoritative in all schools even now. Manu IX. 199¹⁵²⁴ provides: 'wives should not spend (for their own benefit) from the property of their families which is common to many, nor from their own property without the husband's permission.' The V. Mayūkha interprets this as meaning that she has no independent power even over *ādhivedanika* and the like, but this would be opposed to the express texts of Kāt., Vyāsa and Devala. Therefore the words must be taken as only recommendatory.

Kāt. (916) delivers a special rule viz. 'stridhana'¹⁵²⁵ which was promised (to a woman) by her husband should be paid to her as a debt by the sons (i. e. by her own sons or stepsons) provided she resides in the husband's family; she should not reside with her paternal family.' The Sm. C. and V. P. (p. 546) explain that even grandsons and great-grandsons are liable to pay just as sons are. According to Kāt. as understood by the Sm. C. and others a wife who is full of evil acts, is immodest, wastes property and is given up to adultery, does not deserve (to dispose of) stridhana and V. P. and V. C. explain that it may be taken away from her in such a case.¹⁵²⁶ In modern times this rule of forfeiture of rights would not be enforced by the courts as regards stridhana. Some explain this verse as referring to the widow as heir and separate the words as 'strī dhanam.'¹⁵²⁷ Vide *Ganga v. Ghasita* 1 All. 46 (F. B.), 48-49.

Succession to Stridhana.—The several schools of Hindu Law differ from each other perhaps more widely on this subject than

1524. न निहारि स्त्रियः कुर्वी कुतुम्बाद्वह्ममध्यगतः । स्वकादपि च विधासि स्वस्य भर्तुरनाज्ञया ॥ मनु IX. 199. This verse is variously explained. कुल्लूक, राघवा-नन्द and others explain निहारि as 'रत्नालंकाराद्यर्थे धनसञ्चये,' while सर्वज्ञानारायण and वय. मयूख explain as 'स्वयः' and सर्वज्ञ explains स्वकात् as 'स्वस्यासाधारण-धनादपि स्त्रीधनस्यतिरिक्तात्'.

1525. भर्ता मयिद्वयं देवसुपयवलीधनं पुनः । विष्टेइ भर्तुकुले या तु न सा पितृकुले नसेत् ॥ कात्या. q. by स्मृतिच. II. p. 283 (first half), वि. र. p. 514, वि. चि. p. 142. The वय. m. p. 153 quotes the first half as देवला.

1526. अपचाराक्रियादुक्ता निर्लज्जा वार्धनाशिका । अपविचाररता या च स्त्रीधनं सा न चार्हति ॥ कात्या. q. by मेधा, on मनु VIII. 23 (without name), स्मृतिच. II. p. 283, वि. चि. p. 141-142, वय. m. p. 157, वय. n. p. 545. 'या पुनः अतिदुष्टा स्त्री सा स्वधन-नभितुष्टमपि विनिषोक्तं नार्हतीत्याह स एव' स्मृतिच.

1527. For a comparison of the ancient and medieval Hindu Law of stridhana with the Roman, French and English law, vide Bannerjee's 'Marriage and stridhana' pp. 394-399.

on any other. But one thing is generally common to all schools viz. that as regards succession to *stridhana* daughters are preferred to sons, though in later days sons were introduced by some writers as heirs along with daughters or even as preferable to daughters for certain kinds of *stridhana*. This was probably due to the fact that the value of *stridhana* property became considerable in later times and society which held to the doctrine of the dependence and inferior position of women could not tolerate the idea that large estates should go to women alone. The causes of the variance among writers on the devolution of *stridhana* are historical. The text-writers wrote at different times and in different countries and probably reflect the popular sentiments of their own countries and times tinged now and then by personal predilections also. The digests sometimes expressly say that their interpretation follows the usage of their times (*vide* V. Mayūkhā in note 1529 below).

The succession to *stridhana* varies according as the woman is unmarried or married, according as the marriage was in an approved or an unapproved form, and also according to the species of *stridhana* and the school of law to which she is subject.

First, the important texts of the *smṛtis* on succession to *stridhana* may be brought together. The oldest extant text is that of Gaut. 28.22 which provides,¹⁵²⁸ '*stridhana* devolves (first) on daughters; (in a competition among daughters) it goes to those that are unmarried (*apratṭa*, lit. not given away in marriage) and (in a competition among married daughters) to those that are not well provided for (i. e. that are indigent).' Manu (IX. 192-193) provides: 'when the mother dies all the full brothers and full sisters should equally divide the mother's estate. Even to the daughters of those daughters some thing should be given (that is) as much as would be seemly out of the estate of their grandmother on the ground of affection'. In Manu IX. 195 it is said that the six kinds of *stridhana*, as also *anyādheya stridhana* and gifts made by the husband through affection, should go to her progeny if she dies in her husband's lifetime. The verses of Manu (IX. 192-3) are variously explained by the commentators, Sarvajña-Nārāyaṇa holding that mother's estate means estate other than technical *stridhana*. Most of them rely on a text of Br. and

1528. श्रीधरं दुहितृनामभ्यन्तानामभ्यन्तिहानां च । मी. 28. 22.

hold that full brothers and unmarried sisters succeed together and married sisters (i. e. daughters of the woman whose heirs are to be found) get some trifle ($\frac{1}{2}$ of each brother acc. to Kullūka). Manu IX. 196-197 further provide that when a woman was married in one of the five forms of marriage viz. Brāhma, Daiva, Āra, Prājāpatya and Gāndharva and died without issue her stridhana goes to her husband and if she was married in the Āsura and the other two forms it went, if she died issueless, to her mother and father. Yaj. II.¹⁵²⁹ 117 provides that daughters take the stridhana estate of their mother and on failure of them the (male) issue. In II.¹⁵³⁰ 144 Yaj. again says that stridhana goes to daughters, but that if the woman dies without issue then it goes to the husband if she was married in one of the four forms (brāhma, daiva, āra, prājāpatya) but to her parents if she was married in the other four forms. Vāṇī Dh. S. (17. 19-21) and Nār. (dāyabhāga, 9) contain the same rules as Yaj. II. 144-145, while Nār. (dāyabhāga 2) states that the mother's wealth should be divided among the daughters and in the absence of daughters the latter's issue takes it. Śāṅkha-Likhita¹⁵³¹ declare that the mother's estate is taken in equal shares by the full brothers (sons of the deceased mother) and their unmarried sisters. Br.¹⁵³² (S. B. E.

1529. मातृदुहितरः शेषसुगतास्य कलेऽन्वयः । वा. II. 117 on which the *mita*, says, 'दुहितृणामभावे अन्यथा दुवादिपुत्रीपादः' ; some construe the word *अन्वय* as meaning the issue of the daughters (i. e. daughter's daughters and daughter's sons). Vide *सू.* p. 159, "पक्ष पात्रवत्त्वः" मातृदुहि ... अन्वयः 'दुहि तत्रापन्वयपदं कन्यासन्वयतिपरमिति केचित् । परे तु दुहितृभावे दुवा एव पुत्रीपुत्रः, नारदीये तदा मातुरेव परामर्शाद्विपादः । आचारसंवादी चार्थं पक्षः ।" नारद (दायभाग, 2) is मातृदुहितरोरभावे दुहितृणां तदन्वयः ; about which the *mita*, on *पात्र*, II. 145 remarks 'तच्छब्देन संनिहितदुहितृपरामर्शात्' . The *सू.* *पा.* (p. 667) explains नारद as मातृदुहितरं दुहितरं अपन्वयस्तदभावे दुहितृणां पुत्रिणीणां तदभावे तदन्वये ये जाता दुहिचास्तेवासिरप्ये' ; the *विवादचन्द्र* p. 75 says 'दुहितृणामभावे तदन्वयस्तदुवादिपुत्रिणीदित्यर्थः' ; मातुरन्वय इति वातकयः ।

1530. अतीतायासमजसि वाग्यवास्तदुवापुत्रः । अन्वयः स्त्रीधनं भर्तृजांछादितुं चतुर्थमि । दुहितृणां पक्षा चेष्टतेषु पितृगतिं तत् ० वा. II. 144-145 ; आद्यादिषु चतुर्षु विवाहेष्वपनायासतीत्यां गच्छतः । शेषेषु च पितर इरेत् । सर्वेष्वेव पक्षाणां पक्षधने तद् दुहितृगामि । निष्पन्नसंख्य 17. 19-21; स्त्रीधनं तदपर्याप्तो भर्तृगाम्यपवात्तु । आद्यादिषु चतुर्णां पितृमासीतरेषु च ० नारद (दायभाग, verse 9)

1531. समं सर्वं सोदृशं मातृकं रिषधर्म्यन्ति कुमार्यम् । अङ्गुलिखित १. By दायभाग IV. 34 p. 79, परा. मा. III. p. 551, वाटम्भडी ०० वा. II. 145, हरदत्त ०० नी. 28. 22 reads समं ... द्वायमहाः स्त्रीकुमार्यम्.

1532. स्त्रीधनं स्वादुपर्याप्तं दुहिता च तदुत्तिनी । अन्वयः चेत्समुदा तु उभो मातृमात्रफलः । बृह. १. by स्मृतिच. II. p. 285, हरदत्त on नी. 28. 22, दायभाग IV. 2. 3 p. 79 (अपर्यपदं तुषपरं तेषामजसिभुहितृभिः सव मातृधनविभागा), परा. मा. III. p. 552 (reads सा न मातृकम्), विवादचन्द्र p. 75.

33 p. 383 verse 87) declares, 'stridhana goes to her progeny, but the unmarried daughter is preferred, while the married one gets only some trifle as a token of regard'. Parāśara holds that the unmarried daughters take all the stridhana, but in a competition between married daughters alone and sons they all take equal shares. Devaḷa¹⁵³³ states, 'on the death of a woman her stridhana is taken in equal shares by her sons and daughters; if she leaves no issue it would be taken by her husband, mother, brother or father'. Parāśara¹⁵³⁴ (q. by Par. M. III 552) states that stridhana devolves on the unmarried daughter, that the son does not get it, but that he shares equally with a married daughter. Kauṭ.¹⁵³⁵ (III 2 p. 153) prescribes that if a woman dies during her husband's lifetime her sons and daughters divide her stridhana; if she has no son then daughters divide it, on failure (of both sons and daughters) the husband takes it and that the sulka, anvādheya or any other kind of stridhana given by her relatives is taken by her relatives. Kātyāyana¹⁵³⁶ (917-920) whose treatment of stridhana is the most detailed of all smṛti writers has the following verses on succession to stridhana: 'Sisters whose husbands are living should share with their brothers the stridhana (of their mother); this is the rule of law about stridhana and partition (among brothers and sisters) is prescribed. On failure of daughters the (stridhana) wealth devolves on sons (of the deceased woman); the wealth given to a woman by her kinsmen (paternal or maternal) goes in the absence of the kinsmen (that gave it) to the husband.

1533. सामान्यं पुत्रकन्यानां सुतायां स्त्रीधने स्त्रियाम् । अपत्याया हरेद्वर्ता माता प्राप्ता पितापि वा । देवट ३. by द्वापभाग IV. 2 6 p. 79, स्प. नि. p. 466, बालम्बह्नी on चा. II, 145.

1534. अन्तापान्तु दुहितः स्त्रीधने परिकीर्तितम् । पुत्रस्तु नैव धनमे पत्तायां तु सन्तान-भाक् । पारस्कर q. by परा. मा. III. p. 552 (तद्वनितिकोदुहितुविवरणम्), स्प. नि. p. 463. Is it पराशर?

1535. जीयति भर्तारि सुतायाः पुत्रा दुहितश्च स्त्रीधनं विभजेत । अपुत्राया दुहितरः । तदुभावे सता । ... शुल्कमन्वाधिवम्पदा वन्मुनिर्दत्तं बान्धवा हरेत् । अर्धशास्त्र III. 2. p. 153.

1536. भगिन्यो बान्धवैः सार्धं विभजेत सन्तुकाः । स्त्रीधनयेति धर्मोप विभागस्तु यत्कल्पितः । दुहितुनामभावे तु रिश्ये पुत्रेषु कदाचन । वन्मुदने तु वन्मुनामभावे भर्तुगामि तत् । पितृभ्यां चैव यद्वत्तं दुहितः रथावरं धनम् । अपत्यायाम्पितायां धनगामि तु सौदरा । आसुरादिषु यद्वत्तं स्त्रीधने पितृकं स्त्रिया । अभावे तदुपार्थानां मातापितृयोस्तद्विषये । कात्या. q. by अपराक p. 721 (the first two only), स्मृतिच. II. pp. 385-287 (all except पितृभ्यां &c.), नि. र. p. 518 and नि. चि. p. 143 (first two); द्वापभाग IV. 2. 12 p. 92 has the verse पितृभ्यां (ascribes it to बुद्धकलपाचन); स्प. म. p. 162 reads पुत्रगामि for भर्तुगामि.

Whatever immovable property was given by the parents to their daughter always goes to her brother if she dies without issue. Whatever wealth was obtained by a woman from her parents in the forms of marriage beginning with *śūra* is declared as going to her parents on failure of her progeny.¹⁵³⁷ The first two verses are apparently in conflict and must be read with Gaut. 28. 22. So probably the following propositions were laid down by Kāt. viz. (1) unmarried daughters are preferred; (2) married daughters whose husbands are living share along with their brothers, if there be no unmarried daughter; (3) widowed daughters take only if there are no daughters whose husbands are living or if there are no sons; (4) wealth given by paternal and maternal kinsmen goes to them and on failure of these, to the husband; (5) immovable property given by parents goes to the brother of the woman on failure of issue; (6) wealth given in the *śūra*, *rākṣasa* and *paisāca* forms goes to parents on failure of issue. Yama has a verse very similar to Kātyāyana's about a woman married in the *śūra* and the following forms. The commentaries and digests make valiant efforts to reconcile the conflicts among the *smṛti* texts quoted above. It is not quite necessary to go into that question here in detail for fear of encumbering this work too much.

How the devolution of *stridhana* was dealt with by the commentators has now to be seen. They all prefer daughters to sons for certain kinds of *stridhana*. Why the devolution of *stridhana* property should be different from that of the property of a male is not clearly explained anywhere. The Mit. on Yaj.¹⁵³⁸ II. 117 gives the reason that woman's property goes to the daughter because in her more particles of the mother's body inhere than in the son. Probably the daughters were preferred as heirs to *stridhana* as a sort of equity, when sons were allowed to exclude daughters in the inheritance to the father's wealth.

According to the Mit. there are two lines of succession to *stridhana*, one for *sulka* and the other for all other kinds of *stridhana*. *Sulka*, acc. to the Mit. that quotes Gaut., devolves first

1537. आशुरादिषु यद् दत्तं विवाहेषु बह्विधे । अपञ्चायामपितायां पितेव तु धने श्रेष्ठं यमः q. by स्मृतिच. II. p. 286; द्वादशभाग IV. 2. 28 p. 88.

1538. मातृपुत्रदुर्लभं पुत्रैरेवापाकणीयं न पुत्रितुमिः । अपञ्चायमिदं तु धने पुत्रितरो यद्विदुमिति । पुत्रं चेतत् । पुमान् पुंसोपधिके श्रुते श्री भवत्यधिके स्त्रियाः—इति स्वयययानां पुत्रितुषु पादुपयान् स्त्रीधनं पुत्रितुमिति । पितृधनं पुत्रयामि पित्रयययानां पुत्रेषु पादुपयान् । मिता, on Ya. II. 117, पुमान्पुंसौ &c. in मनु. III. 49.

on the full brothers, then on the mother.¹⁵³⁹ Some like the Subodhini, the Dipakalka, Haradatta on Gaut. 28. 23 hold that it devolves on the mother first and then on the full brothers; but many works such as the *Dayabhāga* IV. 3. 28 (p. 95), Sm. C., Par. M., V. P., V. C. follow the Mit. It is somewhat strange that the *Madanapārijāta* p. 668 (which was really composed by the author of the Subodhini in the name of his patron Madanapāla, holds that the *śulka* is first taken by the brothers and then by the mother. This raises a doubt whether the printed Subodhini is correct or whether the author changed his opinion.

As regards succession to the property of a maiden there is no difference at all between the Mit. and other works. The Mit. quotes a text of Baudhāyana¹⁵⁴⁰ that the wealth of a deceased maiden first devolves on her full brothers, then on the mother and then on the father. The V. P. adds that on failure of the father the maiden's wealth goes to the parents' nearest sapinda.¹⁵⁴¹ Yāj. II. 146 provides that if a girl who had been promised in marriage dies before marriage, the intending bridegroom was entitled to take back the *śulka* or other gifts

1539. भगिनीशुल्कं सोद्वर्णामूर्ध्वं मातुः पूर्वं चैके । मी. 28. 23-24; मिता. (on या. II. 145) says, शुल्कं तु सोद्वर्णामेव, 'मातृभावे सोद्वर्णं दृष्ट्वित्यर्थः' सुबोधिनी on या. II. 145; 'शुल्कं तु सोद्वर्णामेव । भगिनीशुल्कं सोद्वर्णामेति यौतमयचनासोद्वर्णभावे मातुः । ऊर्ध्वं मातुरिति तद्वचनादेव । पूर्वं चैके इति तु परमतम् ।' स्व. प्र. p. 533; शुल्कं तु सोद्वरा एव दृष्टीयुः । तथा च नातमः । भगिनी ... मातुरिति । द्रुहिचादिषु पौत्रा पन्तेषु विद्यमानेष्वपि भगिनीशुल्कं सोद्वरा एव दृष्टव्यमित्यर्थः । मय. या. p. 668; 'ऊर्ध्वमिति मातृमेवपादतन्त्रमित्यर्थः । कल्पतद्वत्त्वेनम् । ... माता चात्र भगिनेषु । तथा च तद्वपमातृभावे द्रुहिचादिषु पौत्रपयन्तेषु सत्त्वपि तत्रभगिनीशुल्कं सोद्वरा एव दृष्टव्यमित्यर्थः । बालम्भङ्गी (स्व. प्र. 257) ; ऊर्ध्वं मातृमयस्तावित्यर्थः । मातापित्रोरनु सद्भावे तयोरेव । दीपकलिका.

1540. रिक्थं सुतायाः कन्याया दृष्टीयुः सोद्वराद्वद्वभावे मातृस्तद्वभावे पितुरिति श्रीमत्परमराजात् । मिता. on या. II. 146; the *drāṣṭāna* makes of this a verse as रिक्थं... सोद्वराः स्वयम् । तद्वभावे भवेन्मातृस्तद्वभावे भवेत्पितुः ॥ The *Madanarāṇa* (folio 106a) reads it as रिक्थं ... सप्तम् । ... तद्वभावे पितुर्भवेत् ॥ मातापित्रोरभावे तत्पत्न्यासञ्जगामि । स्व. प्र. p. 552. The above passage of the Mit. is referred to in *Gandhi Maganul v. Bai Jugal* 34 Bom. 193 (F. B.) at p. 211 (where it was held that a paternal grandmother in Gujarat inherited the wealth left by her maiden granddaughter in the absence of nearer heirs, that she took an absolute interest and that on her death the property goes to her heir and not to that of the grand-daughter).

1541. Vide also *Janglubai v. Jetha Appaji* 32 Bom. 409, 412 and *Vithal v. Bala* 60 Bom. 671, 677 for instances of sapindas of the parents inheriting to the stridhana of a woman dying respectively as a maiden or as a woman married in an approved form of marriage.

made by him after deducting his own expenses and those of her family.

The Mitākṣarā order of succession for all kinds of strīdhana, other than sulka and maiden's property, is as follows: (1) unmarried daughter; (2) married daughter who is indigent; (3) married daughter who is well provided for; (4) daughter's daughters; (5) daughter's son; (6) sons; (7) son's sons (here also the rule of *per stirpes* applies); (8) husband (if the woman was married in one of the four approved forms); (9) sapindas of the husband in the order of propinquity; on failure of any sapinda of the husband, her mother, then her father and then the sapindas of the father (before it goes to the Crown). But if the woman was married in one of the unapproved forms, then on failure of her descendants her strīdhana went to her mother, then to her father and then to the father's sapindas in the order of propinquity. On failure of the sapindas of the father it would (by analogy) go to her husband and then to his sapindas (before going to the Crown). When grand-daughters directly inherit the strīdhana of their grandmother they take *per stirpes* (acc. to the Mit. which quotes Gaut. 28. 15), if they are the daughters of several daughters.¹⁵⁴² The Mit. (on Yaj. II. 145), Aparārka (p. 721) and several others provide (following Manu IX. 198 = Anuśāsana 47.25) that if a woman of a lower caste dies issueless leaving strīdhana, then the daughter of her co-wife of a higher class inherits that strīdhana and on failure of such step-daughter, the son of the latter inherits. It may be noted that as regards succession to strīdhana, the rule of representation which holds good in relation to succession to males does not apply. When a male dies leaving separate property and a son and a grandson (son of a predeceased son) both succeed together, the grandson representing his deceased father. But if a woman possessed of strīdhana dies having only a son and a predeceased son's son, the son will take the whole of the strīdhana excluding the son's son. Vide *Bai Raman v. Jagjivandas* 41 Bom. 618.

It is not possible nor necessary to deal exhaustively with the devolution of strīdhana according to the various schools of Hindu Law. But a few indications from the important text

1542. मातां पित्रमातृकाणां विधवायां समवाये मातुहारेण भागकल्पना । प्रतिमातृको वा स्वर्ग्ये भागविदोषः—इति यौतमस्मरणात् । मिता. on वा. II. 145.

books having authority in the different provinces will be offered. According to the Sm. C. (which is the leading authority in Madras after the Mit.) stridhana includes only those kinds of property that are so described in the smṛtis (i. e. only technical stridhana) and the lines of devolution are as follows: (1) *śulka* devolves in the same way as laid down by the Mit. cited above (Sm. C. II. p. 287); (2) *Yantaka* devolves on unmarried daughters first (Sm. C. II. p. 285); (3) *Anvādheyaka* and *Bhartṛdatta* pass to sons and married daughters whose husbands are living, all inheriting together in equal shares (Sm. C. II. p. 284); (4) other kinds of technical stridhana such as *adyagni* &c. pass first to the maiden daughters and married daughters who are *apratishṭhita*,¹⁵⁴³ then to married daughters that are provided for; then to daughter's daughters, then to daughter's sons, then to sons, then to son's sons &c., then to the husband or father (according to the form of marriage). The Madras High Court follows the Mit. (in preference to the Sm. C.) as to the devolution of *Anvādheyaka* and *Bhartṛdatta* and holds that certain kinds of non-technical stridhana (such as gifts by strangers during coverture) devolve acc. to the rules of the Mit. Vide *Salem v. Lutchman* 21 Mad. 100.

The *Vivādacintāmaṇi*, the leading authority in Mithila, restricts stridhana to the technical stridhana recognized by the smṛtis and lays down the devolution of it as follows: (1) *Śulka*¹⁵⁴⁴ (defined as property received by a woman at the time of her marriage, if in an unapproved form) passes as under the Mit. cited above; (2) *Yantaka* passes first to unmarried daughters, then in the way laid down by the Mit. for all stridhana; (3) all technical stridhana other than the two preceding varieties passes to sons and unmarried daughters together, then to sons and married daughters jointly, then to daughter's daughters, then to daughter's sons and then as under the Mit. system (for stridhana in general.)

The *Vyavahāramayūkha* which is held to be of paramount authority in Gujarat, Bombay Island and Northern

1543. The word अप्रतिष्ठित is explained by the Sm. C. as follows. 'अप्रतिष्ठित अनपत्या निर्धना दुर्मेता विधवा वा । एवमपराशोक्तसारत् गौतमवचनं स्यादप्यतः । अत्र विज्ञानेश्वरकृता स्यात्तथा तेषां स्वदुष्टिनाशेनाभ्याहारादिकरणात् ।' स्मृतिच. II, p. 283. नि. वि. p. 147 also says 'अप्रतिष्ठिता अनपत्या निर्धनमर्तुका दुर्मेता चेति समाहृत्यः ।'

1544. गौतमः । भविषीष्टुल्लेखे सोदुर्भागान्मूर्खे मातुः । पूर्वं चेत्येके । आहुरादिकानाह-
ययल्लभविषयनेत् । नि. वि. p. 143.

Konkan¹³⁵ proposes various lines of succession to stridhana. Its treatment is based on the Sm. C. and the Madanaratna. It first divides stridhana as stated above into technical (pāribhāṣika) and non-technical (apāribhāṣika). The first is subdivided into four classes for the purpose of inheritance; (I) sulka which passes as stated above under the Mitākṣarā; (II) yautaka goes to unmarried daughters, (if there be no unmarried daughters)

1345. For the territory in which the V. Mayūkhā is supreme, vide *Lallubhai v. Manikvarbai* 2 Bom. 388 (F.B.) at p. 418, *Jantibai v. Sandra* 14 Bom. 612 at pp. 623-24; *Vyas Chimantai v. Vyas Ramchandra* 24 Bom. 367 (F.B.) at p. 373. How the Vyavahāramayūkhā composed by a Mahā-rāṣṭra brāhmaṇa whose family had settled at Benares came to be regarded as a work of high authority in Gujarat is explained in *Lallubhai v. Manikvarbai* 2 Bom. 388 at pp. 418-419 and in *Bhagirathibai v. Kahnajirav* 11 Bom. 283 (F.B.) at pp. 294-95. As there is divergence between the views of the Mīṭ and the Mayūkhā in the rules of succession, it becomes a matter of great practical importance to settle with precision the exact limits in Northern Konkan up to which the Mayūkhā must be regarded as a work of paramount authority. It has been judicially decided that Karanja, an island opposite the Bombay harbour, is governed by the Mayūkhā (in *Sakharām v. Sitabai* 3 Bom. 353), that Mahad, the southernmost Taluka of the Kolaba District, is not so governed and that the predominance of the Mayūkhā cannot be taken further south than Cheul and Nagothna in the Kolaba District (vide *Narhar v. Bhanu* 40 Bom. 621). Similarly difficult questions arise whether Kathiawar which is quite contiguous to Gujarat and some territory bordering on Gujarat towards the north or east is governed by the views of the Mayūkhā in preference to those of the Mīṭ. Some parts of Kathiawar which were (and even now are) under the domination of the Gaikwad of Baroda may, on the analogy of the grounds on which the Mayūkhā is held to be of paramount authority in Gujarat, be deemed to be governed by the Mayūkhā. It appears to me that the tendency of courts should be to restrict the extent of the territory in which the Mayūkhā is supreme and to hold that everywhere the Mitākṣarā is supreme, except in those territories where the Mayūkhā has been expressly recognised as supreme by the feudatory States contiguous to Gujarat or by judicial decisions. The Mīṭ is the paramount authority in the whole of India except in Bengal; therefore on the analogy of the maxim that a general rule is applicable and is supreme in all cases except where an exception clearly covers the matter (अपवादविषयपरिहारिण उक्तमेव व्यवहितिः) districts outside modern Gujarat but bordering on it should not be held to be governed by the Mayūkhā.

then probably to the married daughters; (III) *anvādheya*^{1545a} and *bhatpriti-datta* (husband's gift of affection) are inherited by sons and unmarried daughters together in accordance with Manu (IX. 192 and 195), (if there be no unmarried daughters) by sons and married daughters, then daughter's issue, then son's sons; (IV) other¹⁵⁴⁶ kinds of technical stridhana devolves as under the Mit.; (V) non-technical¹⁵⁴⁷ stridhana is inherited in the following order; sons, son's sons, sons' sons' sons, daughters, daughters' sons, daughter's daughters. When there is no issue of the woman the succession depends in all cases as under the Mit. on the question whether the woman was married in an approved or an un-approved form. The V. Mayūkhā employs language somewhat different from that of the Mit. in speaking of the inheritance to stridhana when a woman dies without

1545a. Vide *Sitabai v. Varantrao* 3 Bom. L. R. 201 (where a long passage from the V. Mayūkhā is quoted in translation and it is held that *anvādheya* includes gifts or bequests from parents after marriage as well as from the husband and that sons and daughters succeed equally to *anvādheya*); *Dayaldas v. Savitribai* 34 Bom. 385 (F.B.), where it was held that a passage of the Mayūkhā wherein the view of the Mit. was first stated and then the view of others really meant that the latter was the view of the Mayūkhā, that sons and daughters inherited *anvādheya* together and that if there were both married and unmarried daughters, the unmarried daughters and the sons inherited together. मुदाया. श्रिया धने दुषैदुदितुमिध साम्येन द्यायम् । तथा च मनुः—जनस्य ... सप्तमस्य । एतस्यान्वाधेयमनुमीतिद्वलक्षितम् । एतद्विशेषधनविषयेऽपरिणीतपरिणीतपुत्रीसमवाये विशेषमाह बृहस्पतिः । स्त्रीधने स्वादुपपत्तां ... । अयमात्मनभावे प्रसन्नभारतदेव्यामिहोत्तुभिः सह विभज्य द्यायमित्याह कात्यायनः । मदनरत्न (folio 105 b). Vide esp. n. text pp. 157-58 for the two views. It will be noticed that the Mit. construes the verse of Manu distributively i. e. sons take equally when they succeed and daughters do so when they succeed and that Manu does not mean that sons and daughters inherit simultaneously.

1546. अन्वाधेयमनुमीतिद्वलक्षितम् एतद्विशेषधनविषयेऽपरिणीतपरिणीतपुत्रीसमवाये विशेषमाह बृहस्पतिः । स्त्रीधने स्वादुपपत्तां ... । अयमात्मनभावे प्रसन्नभारतदेव्यामिहोत्तुभिः सह विभज्य द्यायमित्याह कात्यायनः । मदनरत्न (folio 105 b). Vide esp. n. text pp. 157-58 for the two views. It will be noticed that the Mit. construes the verse of Manu distributively i. e. sons take equally when they succeed and daughters do so when they succeed and that Manu does not mean that sons and daughters inherit simultaneously.

1547. Vide *Manilal Rewadat v. Bai Rewa* 17 Bom. 758 (as to inheritance of non-technical stridhana) where it was held that as regards stridhana under the Mayūkhā the woman is recognized as a fresh source of devolution, that the words 'sons and the rest' mean no more than sons, grandsons and great-grandsons, that as regards property which does not class as *pāribhāṣika* stridhana, the sons and the rest take precedence over the 'daughters and the rest' (i. e. their issue), that falling sons and daughters the heirs to *pāribhāṣika* stridhana and *apāribhāṣika* stridhana are the same, save that as between male and female offspring the latter have a preferential right as to *pāribhāṣika*, while the former have a similar right as to *apāribhāṣika*, परिभाषिकातिरिक्ते मातृधने दुहितृसहो द्यायद्वय एव लभेरन् । स्प. मयूख p. 160.

estate. But it has now been judicially held that both mean the same thing¹⁵⁴⁸.

In the *Dāyabhāga* school the devolution of various kinds of stridhana according to the *Dāyabhāga* and D. K. S. is as follows: (1) *sūka* devolves¹⁵⁴⁹ in the following order: (1) full brother, (2) mother, (3) father, (4) husband; (II) *Yautaka* devolves¹⁵⁵⁰ in the following order: (1) unmarried and unbetrothed daughters, (2) betrothed daughters, (3) married daughters, who have or are likely to have sons, (4) barren married daughters and childless widowed daughters taking together in equal shares, (5) sons, (6) daughter's sons, (7) sons' sons, (8) son's son's sons, (9) step-son, (10 and 11) stepson's son, stepson's grandson. Then if the marriage was in an approved form, *yautaka* passed in the absence of any of the above in order to husband, brother, mother and father. If the marriage of the woman was celebrated in an unapproved form then her stridhana passed in order to mother, father, brother, husband. (III) *Anvādheyā* gifts¹⁵⁵¹ (gifts or bequests) made subsequent to marriage by the father

1548. Vide *Tukaram v. Narayan* 36 Bom. 339 (F. B.), where there is an elaborate discussion about the following passages of the Mit. and the *Mayūkhā*. तद्वजःस्त्रीधने पितृगामि । माता च पिता च पितरौ तौ मध्यवर्तीति पितृगामि । तद्वभावे तत्पत्न्यासञ्जानी धनग्रहणम् । मिता, on पा. II. 145 ; भर्तृभावे तत्कुले तस्याः पत्न्यासञ्जो लभते । पित्रभावे च पितृकुले तस्याः पत्न्यासञ्जः । ... यत्तु मिताश्वरापो भर्तृभावे तत्पत्न्यासञ्जानी सपिण्डानीं पित्रभावे च तत्पत्न्यासञ्जानी सपिण्डानामिति तत्रापि तेनास्याः पत्न्यासञ्जोत्पत्त्यासञ्जास्तद्वारा तत्कुले पत्न्यासञ्जा इति यावदित्येवं व्याकृतम् । यद. मयूख p. 161.

1549. अतः (शुल्कं) यधमे सोदराणां तद्वभावे मातुर्मातृभावे पितुः । यथा पुनरभावे तद्वर्त्तते । द्वायभावे IV. 3. 29 p. 95

1550. ततश्च परिणयनलम्बस्त्रीधनं दुहितुरेव न दुवाणां तत्रैव च क्रमार्थं यौतकधनं स्त्रीधनं दुहितृणां ... द्वितीयं च । मातादिविधे विवाहेषु यत्तद्वधनप्रतिधनं स्त्रियाः तत्तत्पत्नी सुतापो यधमे दुहितृणामेव तत्रापि यधमे कन्यायास्तद्वभावे स्त्रियास्तद्वभावे परिणीतायाः । सर्वदुहितृभावे च दुवस्थाधिकारः । अमलःस्त्रीधने भर्तृधिकारात् । *Dāyabhāga* IV. 2. 22 and 25, pp. 85-86. It will be noticed that the D. B. distinguishes between un-betrothed, betrothed and married daughters. Vide Bannerjee's 'Marriage and Stridhana' pp. 477, 489-491 for order of inheritance to *Yautaka*.

1551. यत्तुनः परिणयनानन्तरं पितृमातृभर्तृकुलस्य स्त्रिया लम्बं धनं तद् द्वावृणामेव । तद्वधनं यज्ञवल्क्यः । यन्मुदत्तं...पुत्रः ॥ (पा. २, 144)...अतः यधमे सोदराणां तद्वभावे मातुर्मातृभावे पितुः । यथा पुनरभावे तद्वर्त्तते । यथा कारवायनः । यन्मुदत्तं तु यन्मुदत्तमन्वये भर्तृगामि तत् । *Dāyabhāga* IV. 3. 10 and 29. Vide *Prasanno v. Sarat* 36 Cal. 86 (son being held the preferential heir to a married daughter to stridhana given to a woman after marriage by her father), *Ram Gopal v. Narain* 33 Cal. 315 (mother held entitled to preference over the husband of a childless woman who died leaving property gifted to her by her father after marriage). In both these cases there is an elaborate examination of passages of the *Dāyabhāga* and it is shown how Srikrishna and even modern writers have created confusion by offering varying explanations.

(Dāyabhāga IV. 2.12-16 pp. 92-93) devolve in the same order as for Yautaka except in a few respects, viz. the son takes before married daughters and in case the woman dies without issue the brother, mother, father and husband succeed in that order. IV. As regards Ayautaka (i. e. all technical stridhana other than the above three) there is a conflict of authority between the Dāyabhāga (IV. 2. 1-13 pp. 79-81) on the one hand and Raghunandana and Śrīkrṣṇa on the other. Acc. to the former the order¹⁵⁵² is: son and *kumārī* daughter (or to either on failure of the other); (on failure of both) married daughters that have sons or are likely to have sons; son's sons; daughter's sons; barren and widowed daughters. But Raghunandana and Śrīkrṣṇa interpolate son's son, son's son's son, stepson, stepson's son, stepson's grandson between daughter's sons and barren and widowed daughters. In the decided cases the latter order has generally been followed.

If there be none of the above both Yautaka and Ayautaka stridhana pass in order (acc. to Dāyabhāga IV. 3. 37 p. 98) to six heirs¹⁵⁵³ viz. the husband's younger brother, husband's

1552. तत्र मनुः । जनन्या ... सनाभयः । ... बृहस्पतिरपि ... स्त्रीधनं तदुपायानां ... । अपत्यपदं पुत्रपरम् । तेनान्नपत्न्याभिर्बुद्धितुभिः सह मातृधनविभागः । ... किं तु कादेव हेतोः पुत्रकुमारीबुद्धिबोस्तुल्यपदधिकारः । एतयोश्चाप्यंतराभावेऽप्यंतरस्य तद्धनं इषोरुपेतयोरभावे तु जडाया बुद्धितुः इषयया सम्भाविततुजायाश्च तुल्यधिकारः सपुत्रद्वारेण पार्ष्वणिष्ठदानसम्भवात् । ... पौत्रपौत्रिजयोस्तु सद्भावे पौत्रस्यैवाधिकारः ... उक्तानां तु सर्वेषां दौहित्रपर्यन्तानामभावे वर्यापतिष्वयोरपि मातृधनाधिकारिताः । तयोरपि तत्पश्चात्तात् प्रजानां च चान्येयानधिकारान् । वाचनम् IV. 2. 1-2, 9, 11-12. Dāyabhāga employs the word *apratita* elsewhere in the sense of 'un betrothed' and so betrothed daughters cannot take along with sons. The last passage in the quotation shows that the doctrine of spiritual benefit was not to be rigidly employed in succession to stridhana, acc. to the Dāyabhāga. श्रीकृष्ण remarks (in his comment on वाचनम्), दौहित्रपर्यन्तानामिति कर्षीचपर्यन्तोपलक्षणम् ।

1553. यदाह बृहस्पतिः । मातुः स्वसा मातुलानी पितृस्वस्त्री पितृस्वसा । अथः पूर्वज-पत्नी च मातृतुलयाः मूर्तोः कृताः । यदासायोरसौ न स्यात्ततो दौहित्र एव च । तत्तुल्यो वा धनं तासां स्वस्त्रीयाद्याः समाप्नुयुः । तदेवां इवादीनां ज्ञातृविभक्तुपर्यन्तानां चाभावे सत्स्वपि अश्वरभातुअश्वरादिषु सपितृषु भवित्रीपुत्रादीनामधिकारिताः अन्तर्गम्यतेष्वन्तात्, स्त्रीणां मातृतुल्यत्वमिति पातुनेगामीयां इवतुल्यत्वज्ञापनेन पित्रदत्तत्ववृत्तत्वेन दापभाग्यकरणे धन-धिकारज्ञापनेकथयोजनकत्वात् । ... मातुलो भागिनेयस्य स्वस्त्रीयो मातुलस्य च । अश्वरस्य सुस्रीश्चैव सत्पुत्रांतामहस्य च । एतेषां चैव भार्यायाः सत्पुत्रास्तुः पितृस्वसा । आज्ञदाने तु कर्तव्यमिति वेदविदो विवक्षितः । इति इन्द्रसातातत्रचन्तात् अस्मीनां पित्रदत्तत्वमिति पातुनात् अथ पित्रदत्तत्वमिति सावधिकारकत्वः । तत्र तथैव देवराः तत्पिण्डतज्जर्तुपिण्डतज्जर्तुदेवपूर्वपुत्रश्च-पिण्डदानुत्तरासपिण्डत्वाच्च तद्धनोपेक्षिते । ... तत्पश्चात्तात् अश्वरयोः पित्रदत्तानां ज्ञातृतात् अथपुत्रपदेऽधिकारोति । अयं क्रमो द्वाहः । स्वस्त्रीयाद्या इति तु न क्रमार्थं किं त्वधिकारिभावज्ञाप-

(Continued on the next page)

brother's son, sister's son, husband's sister's son, brother's son, daughter's husband. Br. says that the mother's sister, maternal uncle's wife, paternal uncle's wife, father's sister, mother-in-law, elder brother's wife are declared to be like one's mother, that when these women have no *aurasi* child or a son of their co-wife or a daughter's son or a son's son or stepson's son, then the sister's son and the rest may take their wealth. This text, acc. to the Dāyabhāga, simply declares that a sister's son and the others may be heirs to the stridhana of the maternal aunt and the rest but the priority is determined among the six heirs mentioned above in Brhaspati's text by the principle of religious benefit. Though the sister's son is the first in Brhaspati's text, it is the husband's younger brother who stands really the first among the six if regard is had to the principle of religious benefit. The Vir. (V. P. p. 554) states that in the absence of heirs up to the stepson and stepson's sons, the sister's son and the rest (mentioned in Br.) are the heirs to a woman's stridhana even when sapindas like her father-in-law are alive, since mere sapinda relationship would not count when in conflict with a special text. It does not appear that the V. P. holds that the six take in the order stated in the text of Br.;¹⁵⁵¹ it rather states that among these six the choice of the preferential heir

(Continued from the last page)

नार्यपदम् । द्वावभागे IV. 3. 31, 35, 36-38 pp. 96-98. Vide also pp. 187-188. The verses of Br. occur in Sm. C. II. p. 287, V. Nir. p. 472, Par. M. III. p. 555, V. Mayūkha p. 161, V. P. pp. 553-554. The above verses of Br. mean that males who are a woman's sister's son or her husband's sister's son or her husband's brother's son or her own brother's son or her daughter's husband or her husband's younger brother are like her son and inherit her stridhana in certain circumstances.

1554. In *Bai Kesserbai v. Hunsraj* L. R. 33 I. A. 176 the above text of Brhaspati was discussed in a Bombay case at great length (pp. 190-197) and it was held that under the Mayūkha a co-widow was entitled to succeed to the stridhana of a widow in preference to her husband's brother or brother's son, that the text of Br. must be taken distributively, that is, when the marriage is in an approved form the husband's sister's son will succeed and that when the marriage is in an unapproved form the brother's son or sister's son will succeed, that the text does not indicate the order of succession which is governed by the principle of propinquity under the Mit. or the Mayūkha. It may be noted that the V. Nir. p. 472 expressly gives the distributive order. Acc. to the Sm. C. the six heirs referred to in the text of Br. take in the order stated therein. The Dāyabhāga does not hold this view.

would be determined by greater or less propinquity¹⁵⁵⁵. On fall¹⁵⁵⁶ of these six the husband's sapindas, sakuiyas and samānodakas take and then the father's kinsmen.

The question of an unchaste daughter's succession to stridhana would be decided in the same way as her succession to her father's property. Under the Dāyabhāga an unchaste daughter will not succeed. But under the Mitaksarā as interpreted by modern courts an unchaste daughter who is a kept mistress or a prostitute may succeed but only after virgin daughters or married daughters as the case¹⁵⁵⁷ may be. The Mit. on Yaj. II 290 relies upon the Skandapurāṇa for the proposition that prostitutes are a fifth caste descended from certain *apsaras*.¹⁵⁵⁸

It has been held by the courts that though prostitution entailed degradation according to ancient Hindu Law, it did not sever the tie of blood. So the stridhana of a *naikin* (a dancing girl) or of a married woman who becomes a prostitute may be inherited by her brother or sister or her husband or her husband's relations.¹⁵⁵⁹

It may not be out of place here to suggest how stridhana should be dealt with when Hindu Law comes to be codified as it is likely to be in the near future. It may be urged that all distinctions on the ground of sex should be altogether done away with and whenever a woman succeeds to any property whether of a male or of a female she should take an absolute estate. But if this change is opposed by a large volume of opinion as it is quite possible, then it should at least be provided

1555. तदेवामभावे सत्त्वपि स्वधुरादिषु सविशेषजन्यगतिकृतद्वयनयताञ्जनिनी-
दुत्रादीनामेव मातुष्वन्नादिवने प्रत्यासत्तितारतम्येनाधिकारः। स्त्रियादीनां तु दामाचारान-
माद्यमास्तम्। वचनविरोधे सविशेषजन्यतासत्तेरप्योजकत्वात्। मय. प्र. p. 354.

1556. Vide *Tara v. Krishna* 31 Bom. 405 and *Govind v. Bhiku* 45 Bom. L. R. 699.

1557. स्मर्यते हि स्कन्दपुराणे पञ्चपुत्रा नाम काश्चनाप्सरसस्तत्सन्ततिर्विदयाकया
पञ्चमी जानिषि। मिता, on या. II. 290.

1558. *Hiralal v. Tripura* 40 Cal. 630, F. B. (holds that brother's son inherited the stridhana of a woman who had become a prostitute), *Narayan v. Laxman* 31 Bom. 784 (sister of a prostitute was held to be her heir), *Narain Das v. Tirlok* 29 All. 4 (husband held entitled to property acquired by a woman after she deserted him), *Subbaraya v. Ramasami* 23 Mad. 171 (stepson was held entitled to succeed to a woman's property though she had deserted her husband and led a life of unchastity).

that all property which a woman inherits from a female should be her absolute property. Then as regards inheritance to stridhana one simple and straightforward rule should be laid down that the woman's sons and daughters should succeed together taking equal shares. A third suggestion would be that when there are no descendants of the woman herself, then the husband should be the next heir. When the stridhana is that of a maiden, the heirs in order should be her brothers and sisters, then her mother, then her father and after the father the latter's nearest heir. It is not quite necessary at this stage to specify what further rules of devolution should be prescribed.

CHAPTER XXXI

MAINTENANCE AND OTHER TOPICS

The subject of maintenance occupies an important place in modern Hindu Law. A brief statement of the law of the *smṛtis* and the digests on this subject must be made here.

The liability to provide maintenance for certain persons arises under the ancient Hindu Law in either of two ways viz. (1) on account of bare relationship between the parties or (2) on the ground of the possession of property. A verse¹⁵⁵⁹ quoted by Medhatithi on Manu III. 72 and IV. 251, by the Mit. on Yāj. I. 224 and II. 175 and occurring in some mss. of the Manusmṛti after XI. 10 provides, 'Manu declares that one must maintain one's aged parents, a virtuous wife and a minor son by doing even a hundred bad acts.' From this verse it follows that irrespective of the possession of property there is a personal legal obligation on the father to maintain his minor son, on the husband to maintain his wife and on the son to maintain his aged parents. Baud. Dh. S. (II. 2. 48) goes further and provides¹⁵⁶⁰ that a son is bound to maintain a mother even if she be *patita*. To the same effect are Āp. Dh. S. I. 10. 28. 9 and Vas. 13. 47.

1559. इदं च मातापितरौ साध्वी भार्या पुत्रः शिशुः । अथकार्षणं कृत्वा भर्तृणा मनुज-
कीदृ ॥ मेधा. on मनु IV. 251 quotes part of it as स्मृत्यन्तर, while the mita. on या. II. 175
ascribes it to Manu. This verse is cited in *Savitribai v. Luxmidai* 2 Bom. 573
(F. B.) at p. 597 (which holds that a Hindu widow voluntarily living apart from
her husband's relatives is not entitled to a money allowance as maintenance
from them if they were separated from him at the time of his death and
that she is not entitled to such maintenance from them whether they were
separated or unseparated from him at the time of his death if they have no
ancestral estate belonging to him in their hands). The texts of Manu,
Yāj. I. 76 and Nār. are held on p. 598 of that report to impose a personal
obligation enforceable by the State. Vide *Raja Ramia Rao v. Raja of
Pittapur* 43 I. A. 148 at p. 154 where it is stated that the grandson is not
included under the word 'son' and a grandfather is under no personal
obligation to maintain a grandson if there is no ancestral property in
his hands.

1560. पतितामपि तु मातं विभ्रवादनभिमापमानः । श्री. ध. सू. II. 2. 48 ; पतिता
पिता परिप्राप्यो माता तु पुत्रे न पतति । कनिष्ठ 13. 47 ; अप्राप्य माता तथा पिता सपिण्डा
कृण्वन्तः सर्वे वाप्राप्याः । दस्यपेक्षामाहपतिताम् स दण्डं प्राप्नुयाद् द्विगुणं ज्ञातम्,
कनिष्ठिकित q. by अथर्वक p. 823 on या. II. 237.

Mamū VIII. 389 prescribes that the man who abandons and does not maintain his parents, wife and son, when they are not *patita*, should be fined 600 *panas* by the king. Nār. also (S. B. E. 33 p. 184 verse 95) provides punishment for such a husband. Yāj. I. 76 states that if a man abandoned a wife who was obedient, diligent, the mother of a son and agreeable in speech he was to be made to give one third of his property to the wife and to maintain her, if he had no property. Viṣṇu Dh. S. V. 163 made the husband punishable like a thief if he abandoned his blameless wife. Kauṭ. II. 1 prescribes¹⁵⁶¹ that if a man being able falls to maintain his child or wife, parents, minor brothers and sisters, unmarried daughters, widowed daughters, when these are not *patita*, should be fined twelve *panas*. These dicta have been followed even by modern courts in India. In *Subbarayana v. Subbakkal*¹⁵⁶² it has been held that a son is bound to maintain his aged mother whether he has inherited property from his father or not.

The manager of a joint Hindu family is under a legal obligation to maintain all male members of the family, their wives and children. Nārada states¹⁵⁶³ that if any one among several (undivided) brothers dies without issue or becomes an ascetic the rest should take the estate and give maintenance to his wives till their death, provided they keep the bed of their husband unsullied but that they may cut off the maintenance if they (wives) behave otherwise. This is because the surviving brothers succeed to the estate in which the deceased had an interest during his lifetime. This is made quite clear¹⁵⁶⁴

1561. अपरपदार्थं मातापितरौ आतृणमात्मन्पुत्रहारात् भगिनीः कस्या विधवाभ्याविहृतः अकिन्ततो द्वादशवर्षो दुष्टोऽप्यत्र पतिनेभ्योऽप्यत्र मातुः । कौ. II. 1. p. 48.

1562. 8 Mad. 236, referred to in *Surampalli v. Surampalli* 31 Mad. 338 at p. 342.

1563. This verse of Nār. is quoted in *Bhikubai v. Hariba* 49 Bom. 459, 463, 27 Bom. L. R. 13 at p. 16.

1564. तथा च नारदः । याः पत्न्यो विधवाः साधव्यो ज्येष्ठेन अश्वरेण वा । नौवर्ज्येणापि वान्नेन भर्तृप्याशादनाश्रमेः । धनव्याहारेणैव सर्वत्र ज्येष्ठार्यो देवो ब्रह्मणः । धनव्याहारेणैव नारादु भर्तृप्यः । अत्र विशेषमात्रं कात्यायनः । स्वपतिं स्वमित्रिनीं कीं तु आसात्तादृशभगिनी । अविनक्तपत्नीं तु धर्मोत्पन्नपत्नीकम् । धनं च वाक्ता धनेन वृद्धतज्जीवनं धनसाधं । निरपनेमिच्छिकर्मं कार्यं वृत्तादिर्ह सिद्धति तादृशमितिर्पथः । तु शब्दो वा शब्दार्थः । ... एतां वृद्धनसम्पादकशेवांश्च वा नामोतीत्यर्थः । स्मृतिच. II. p. 292 and स्प. न. p. 516. (The passage of नारदु in Mr. Gharpure's edition is rather corrupt). The स्प. मधुसू. p. 139 quotes कात्यायन, this verse of Kātyāyana is quoted in *Lakshman v. Satyabhamabai* 2 Bom. 494 at p. 511.

in the Sm. C. explaining a verse of Nār. vii. 'widows that are virtuous must be maintained with food and raiment by the eldest brother (of the deceased) or by the father-in-law or by any other gotraja' on which it remarks: "The words 'by him who takes the estate' must be understood before all the words such as 'the eldest brother'". Kāt. (922) states, 'when the husband goes to heaven the wife is entitled only to food and raiment if he was unseparated or she may get a share in (ancestral) property till her death'. The Sm. C. remarks that as maintenance depends upon taking wealth, Kāt. provides two alternatives. In cases too numerous to cite this has been followed by all High Courts. Similarly an heir is bound to maintain out of the estate taken by him those persons whom the deceased was legally or morally bound to maintain. These persons who are excluded from inheritance or partition are entitled to maintenance and their virtuous wives and unmarried daughters also are entitled to be maintained (Yaj. II. 140-142 Manu IX. 202, Vas. 17, 54). The Baud. Dh. S. (II. 2, 43-46)¹⁵⁶⁵ provides that those who are past undertaking transactions (i. e. are very old) should be given food and raiment and also those who are blind, idiotic, impotent, immersed in vice and suffering from (incurable) diseases, and those that engage in prohibited acts, except the *patila* and his issue. Devala (quoted in the V. Mayūkha p. 165) has a similar passage, 'when the father is dead (or even when being alive he makes a partition) the impotent, the leper, the lunatic, the idiot, the blind, an outcast and his offspring, a person wearing a heretical sect mark—these are not entitled to a share of the heritage; to these except the *patila* food and raiment are to be given'. These persons suffer from a personal disqualification and maintenance is given to them in lieu of a share not because their status is denied but because they are incapable of management and enjoyment of property. Vide *Raja Ram Rao v. Raja of Pittapur*.¹⁵⁶⁶

The general principle is that an heir is legally bound to provide out of the estate taken by him as heir maintenance for those persons, male or female, whom the late owner was morally or legally bound to maintain. For example, if there is no ancestral property the father-in-law who possesses only self-

¹⁵⁶⁵ Vide note 1151 above for श्री. व. स. II. 2, 43-46. This and the text of Devala are quoted in *Murari v. Parvatibai* 1 Bom. 177 at p. 183.

¹⁵⁶⁶ 45 I. A. 148 at p. 154.

acquired property is not legally bound to maintain his daughter-in-law (widow of a predeceased son); but on the death of the father-in-law, his heir i. e. son, widow, or daughter would be legally bound to maintain a widowed daughter-in-law.^{156a} The Bombay High Court, however, adds the condition that the predeceased son must have been in union with his father when he died; vide 23 Bom. 608.

By Act XVIII of 1937 it has been provided that in a family governed by the Mitākṣarā the widows of deceased coparceners such as the daughter-in-law and the grand-daughter-in-law are entitled to their husband's interest. The Act does not expressly state that their rights to maintenance are taken away. In many cases such widows may prefer to take a share instead of being allotted only maintenance and so far the law of maintenance will tend to become obsolete.

Another important question is what is the effect of unchastity on the right to maintenance? As regards the wife's right to maintenance and the effect of unchastity thereon during the husband's lifetime, vide H. of Dh. vol. II pp. 571-73 above. Manu XI. 176 says that a wife guilty of adultery should be confined by the husband in the same house and should be made to undergo the same penance as a man guilty of adultery has to undergo; Yāj. I. 70 also says that a wife guilty of adultery should be deprived of her status as a wife as to wealth and religious observances, should be given bare maintenance and should be confined to a part of the house. Unchastity on the part of a Hindu widow disentitles her to maintenance under certain circumstances. Vas. 21. 10 provides that four classes of wives must be abandoned viz. one who yields herself to her husband's pupil or to his *guru* and especially one who attempts the life of her husband or who commits adultery with a man of a degraded caste and in 21. 12 Vasiṣṭha states that the wives of brāhmanas, kṣatriyas and vaiśyas, who commit adultery with a śūdra, may be purified by penance if no child is born (of the adulterous intercourse) but not otherwise'. It is provided by Yāj. I. 72 that if a woman (of the three higher castes) conceives through adultery with a śūdra or kills her foetus or attempts the death of her husband or is guilty of grave sins (such as brāhmaṇa-murder) she shall be abandoned.

^{156a.} Vide *Rajani Kanta v. Sajani Sundari* 61 I. A. 29; *Yamunabai v. Nanubai* 23 B. m. 608.

Manu IX. 188 provides that when women become *patita*, the rite called *ghatasphota* (the procedure of which may be seen at p. 388 of the H. of Dh. vol. II and in note 1168 in the Appendix to this volume) may be performed, but they must be given food and raiment and they must be provided with a hut near the family house. Yaj. III. 296 has a similar provision. The result is that there is no text which provides that a widow who is once unchaste must be deemed unchaste for ever and must for ever forfeit her claim even to a starving maintenance even if she repents, reforms her ways and gives up an immoral life. On the contrary the texts say that widows guilty of adultery are purified by penance and may be restored to all their social privileges. For example, Manu¹⁵⁶⁷ XI. 189 says generally about all persons that after they perform the appropriate *prajacitta*, they should not be rebuked or avoided (but should be restored to all social intercourse). The Mit. on Yaj. I. 72 expressly says that the abandonment of even such women as are referred to in that verse consists in not associating with them conjugally and in religious matters, but does not mean that they are to be driven out of the house.¹⁵⁶⁸

On Yaj. III. 297 (which states that in the case of women there are three peculiarly grave sins viz. adultery with a low-caste man, killing the foetus and attempt to murder the husband) the Mit. sums up the whole position as follows: (1) total abandonment of women for the four grave sins laid down in Vas. 21. 10 takes place when they do not perform penance; (2) women guilty of adultery not of the aggravated kind mentioned in Vas. 21. 10 are to be given starving maintenance that would keep body and soul together and are to be lodged in a hut near the house and to be afforded protection (Yaj. I. 70 and III. 296), even if they do not perform the requisite penance. But the Mit. is silent as to the claim to maintenance of widows that at first led a life of incontinence (but not of the aggravated kind) and subsequently reformed their ways. But from Manu XI. 189 it may be inferred that widows not guilty of

1567. एतस्मिन्निमित्तैर्नार्थे किञ्चित्सहाचरेत् । कृतनिर्णयनांश्चैव न दुःखसेत कर्हि-
चित् । मनु XI. 189 = विष्णुधर्मसूत्र 54. 31. उपरान्तं p. 98 says on वा. I. 70, कृतमाप-
द्यिषा तु संस्पृशार्थं भवति-कृतनिर्णयः ... कर्हिचित्-इति मनुवचनात् ।

1568. स्वामर्त्योपभोगधर्मकार्येषां तु निष्कासनं दूराचरणा । निदम्नपादकवेदनानि-
इति नियमात् । जित्वा. on वा. I. 72, निदम्नपादकवेदनानि । मनु XI. 176. This
passage of the Mit. is quoted in *Bhikubai v. Hariba* 27 Bom. L. R. 13
at p. 20 (= 42 Bom. 439 at p. 467).

aggravated adultery that have undergone the proper *prāyaścitta* and that return to decent life would have been entitled to ordinary maintenance from the period they turned over a new leaf.¹⁵⁶⁹

A brief reference to the modern case law on this point may be made here. In *Bhikulai v. Hariha*¹⁵⁷⁰ Sir Lallubhai Shah (after an elaborate examination of ancient and medieval authorities and decided cases) held that a widow who had been unchaste, but who is proved to have given up the life of unchastity is entitled to bare maintenance. In *Lakshmichand v. Anandi* the Privy Council make the general observation.¹⁵⁷¹ 'It is true that the right of a Hindu widow to maintenance is conditional upon her leading a life of chastity and that she loses that right if she becomes unchaste'. In *Kisanji v. Lakshmi*¹⁵⁷² it was held that subsequent unchastity disentitled a widow from recovering maintenance, even though it is claimable under an agreement made with the deceased husband's father and brother. In *Musammatt Ganga v. Ghasita* 1 All. 46 (F. B.) it has been held that unchastity does not incapacitate a daughter from inheriting stridhana. In *Angammal v. Venkata* 26 Mad. 509 the same rule was laid down.

The illegitimate son born of a śūdra concubine to a man of the three higher castes appears to have been held entitled to maintenance from very early times. Gaut. 28, 37 provides, 'the son from a śūdra woman of a man (of the three higher varṇas) who is without issue receives maintenance (lit. source of maintenance), if he is obedient, in the same way as a pupil might receive'. And Gautama (28, 43) extends the same rule to the offspring of *pratiloma* unions. Vide p. 601 above and note 1135 for the text of Gaut. and Bṛ. on the point. Manu IX.

1569. Vide *Sathyahama v. Kesavacharya* 39 Mad. 658 at p. 660 where it is said, 'But in none of these texts is there any provision for a woman who has repented and was subsequently leading an honest life. It is not to be presumed from the omission to provide for such a contingency that the resumption once made is to be irrevocable and that the fallen woman who had reformed is to be denied even a starving allowance'. Vide also *Bhikulai v. Hariha* 27 Bom. L. R. 13 at pp. 23 and 26 and *Rashtumar v. Bhagavanta* 36 All. 392, 394.

1570. 27 Bom. L. R. 13 = 49 Bom. 459.

1571. 62 I. A. 250 at p. 255.

1572. 33 Bom. L. R. 510. But this case seems to be in conflict with the decision in *Shivaji v. Bai Sanbli* 33 Bom. L. R. 490.

155 also provides that the son of a man of the three higher castes from a sūdra woman (not married to him) is not entitled to share in the ancestral estate. Br. (S.B.E. 33 p. 374 v. 31) states¹⁵⁷³ that an obedient and meritorious son born from a woman of the sūdra caste to a man who has no other child should get maintenance and that the sapindas should divide the rest of the wealth of the deceased. Both the Mit. and the V. Mayūkha, while explaining Yaj. II. 133-134 about the rights of the illegitimate son of a sūdra from a sūdra woman, remark that one who is begotten on a *dāsi*¹⁵⁷⁴ by a member of the regenerate classes is not entitled to a share even at the father's choice nor to a half share after his father's death but that he is only entitled to maintenance.¹⁵⁷⁵

There is a good deal of case law on this subject, but much of it is irrelevant in this treatise. The right of maintenance attaches in the first instance to the separate property of the putative father and if the latter leaves no such property but was a member of a joint family it attaches to the property of the joint family of which the putative father was a member.¹⁵⁷⁶ It has further been held that it does not matter if the woman was not a *dāsi* (a slave) or a permanent concubine in the exclusive keeping of a man or that the intercourse was adulterous.¹⁵⁷⁷ It has been also held that the illegitimate son's right to maintenance is a personal right and cannot be transmitted to his son¹⁵⁷⁸ and that maintenance has to be provided for him till his death¹⁵⁷⁹ (and not merely up to his attaining majority),

1573. अन्वयस्य ... समवाप्नुवुः ॥ इह, cited above in n. 1135 and q. by द्वापभाष IX. 28, स्व. मयूख (p. 103). This verse of Br. is cited and translated in *Krishnayyan v. Muttusami* 7 Mad. 407 at p. 412 and in *Rajani Nuth v. Nitai* 48 Cal. 643 (F. B.) at p. 686.

1574. For the meaning of *dāsi* vide above p. 602 n. 1137.

1575. अथ च श्रुत्यनुरोधेन ... किं स्वमुक्तयेजीवनाय लभते । मित्र. on यज. II. 133-134 q. above in n. 1136. Vide स्व. मयूख p. 104 and स्व. व. p. 488 for almost the same words. The word जीवनाय does not mean 'bare maintenance' or 'bare necessities of life,' has no reference to the amount of maintenance but is used to distinguish it from *anūsa* (share). Vide *Hiralal v. Meghraj* I. L. R. (1938) Bom. 779 at pp. 787 and 794.

1576. *Ananthaya v. Vishnu* 17 Mad. 160; *Subramania v. Valu* 34 Mad. 68; *Vellaiyappa v. Narayan* 58 I. A. 402, *Hiralal v. Meghraj* I. L. R. (1938) Bom. 779 = 40 Bom. L. R. 935.

1577. Vide *Rahi v. Govind* 1 Bom. 97.

1578. *Roshan Singh v. Balwant Singh* 27 I. A. 51 = 22 All. 191.

1579. *Hargobind v. Dharam Singh* 6 All. 329, *Ruppa v. Singaravelu* 8 Mad. 325, *Hiralal v. Meghraj* I. L. R. (1938) Bom. 779.

except in Bengal.¹⁵⁸⁰ The fact that the texts employ the word "sūdrāputra" (in the masculine gender) has been interpreted by the decided cases as involving that an illegitimate daughter is not entitled under Hindu Law to maintenance. Vide *Parvati v. Ganpatrao*¹⁵⁸¹ and *Vellaiguppa v. Natarajan*.¹⁵⁸²

Another frequent subject of litigation in modern times has been a concubine's right of maintenance under the Hindu Law. It has been held that a concubine has no legal right to claim maintenance from her paramour during the latter's lifetime, as he can discard her at any time and as she cannot compel him to keep her.¹⁵⁸³ So also a Hindu is not entitled to transfer joint family property to a concubine for her maintenance during his lifetime.¹⁵⁸⁴ But on the death of the paramour a great difference is made in the rights of a concubine that was in his exclusive keeping till his death. Such a concubine has been held to possess a legal right to maintenance payable out of the estate, ancestral or self-acquired as the case may be, in the hands of those who take it after the death of the paramour. The rights of women, who are not wives, to maintenance are based mainly on two texts, viz. of Nārada and Katyāyana, that are explained in the Mīl, the V. Mayūkha and other medieval works. Nārada says:¹⁵⁸⁵ 'A king devoted to dharma should give maintenance to the women (*stri*) of a deceased person (when the king succeeds as heir by escheat), except when the deceased person is a brāhmaṇa'; while Kat. (931) states,¹⁵⁸⁶ 'heirless property goes to the king after keeping aside (wealth sufficient to provide) for the women (*yogit*), the dependents (or servants) and the funeral rites and śrāddhas (of the deceased)',

1580. *Nilmoney v. Haneshur* 4 Cal. 91.

1581. 18 Bom. 177, 183.

1582. 50 Mad. 340.

1583. *Ramanarayan v. Buchamma* 23 Mad. 282; *Ningareddi v. Lakshmana* 26 Bom. 163; *Akku v. Ganesh* 47 Bom. L. R. 5 (F. B.) at p. 12.

1584. *Thakur Rab Prasad v. Chhotay Munwan* 12 Lucknow 469.

1585. अथवा ब्राह्मणस्तु किन्तु राजा धर्मपरायणः । तत्कालीनां जीवनं दयादेव दाय-
निधिं स्मृतः ॥ नारद (दायभाग 52). q. by the Mīl. on Yāj. II. 114, परा. मा. III.
p. 335.

1586. अदायिकं राजानामि पोषिद्वृत्तौ धनद्वयिकम् । अयास्य ओषिधद्वयं ओषिधे-
भ्यस्तदपेक्ष ॥ कात्या. q. by Mīl. on वा. II. 114, परा. मा. III. p. 335, म. म.
p. 139. This verse is quoted in *Savitribai v. Luxmidai* 2 Bom. 373 at
p. 608, *Yashwantrao v. Kashibai* 12 Bom. 26.

Kaut. also similarly prescribes (III.¹³⁸⁷ 5. p. 161), 'the king takes heirless property except that of *śrotṛiṇas*, setting apart (wealth) for the maintenance of women (of the deceased), for funeral rites and for poor or wretched (dependents of the deceased)'. The *Mit.*, the *V.*, *Mayūkhā*, the *Par. M.* and others state that the verses of *Nār.* and *Kāt.* refer to *avaruddha-stri* alone, since the word *paiśi* (duly wedded wife) does not occur therein, but only the words '*yosi*' and '*stri*'.¹³⁸⁸ There has been a great divergence of views in the decided cases about the significance of *avaruddha stri*. It is generally rendered as a concubine or mistress in the exclusive-keeping of a person till the latter's death'. Several conditions are necessary to constitute a woman an *avaruddha stri* capable of claiming maintenance from the estate of her deceased paramour in the hands of his sons or other heirs. In the first place, she must have been continuously and exclusively in his keeping till his death. How long she should have been thus in his keeping cannot be fixed by any hard and fast rules. She must have been so long in his keeping continuously till his death that it can be said that the connection had become permanent. In *Bai Nagubai v. Bai Monghubai* a period of five years was deemed to be sufficient. In the second place the concubine¹³⁸⁹ must observe sexual fidelity to her deceased paramour after his death in order to be able to claim maintenance from the estate in the hands of his heirs or successors. In *Bai Monghubai v. Bai Nagubai*¹³⁹⁰ a third condition was laid down viz. that the connection of the concubine with the deceased paramour should be perfectly open and recognized and she must have been kept practically as a member of the family. But in *Bai Nagubai v. Bai Monghubai*¹³⁹¹ the Privy Council overruled the above decision and held that in order to entitle a mistress to maintenance it is not necessary that she should have resided in the same

1387. अद्वयानुके राजा हरेखीदृष्टि-केत-कद्वयवर्ममन्त्र ओषिधद्वयानु। तत् प्रविष्टेयः यवपुत्रे। की. III. 5. p. 161. Dr. Shām Shastri's translation (p. 205) 'property for which no claimant is found shall go to the king, except the property of a woman, of a dead man for whom no funeral rites have been performed or of a niggardly man' is clearly inaccurate and hardly in consonance with the actual words of the text.

1388. वद्वि वद्विपमेनेके-अद्वयपिठे पवित्र-दृष्टि तद्वयवर्मद्विपिधये पोषिद्वयानु। नारदवचनं च अन्वय स्मृतः-द्वयवर्मद्विपिधये। श्रीशङ्ख-द्वयानु। मिता. on पा. II. 114.

1389. *Yashwantrao v. Kashibai* 12 Bom. 26 at p. 28.

1390. 24 Bom. L. R. 1002 = 47 Bom. 401.

1391. 53 I. A. 153 = 30 Bom. 604 = 38 Bom. L. R. 1143.

house with the deceased together with his wife and the ordinary members of his family. And in *Dagawati v. Kesarben*¹⁵⁹² it was further held that the concubine need not prove that she was recognized by the family of the deceased or that his relationship with her was known to the family. A further restriction was imposed by the case of *Anandilal v. Chandrabu*¹⁵⁹³ that the intercourse with the paramour should not have been adulterous. But this case has been overruled by a recent Full Bench decision in *Akku v. Ganesh*¹⁵⁹⁴ which holds that a permanently kept concubine is entitled to be maintained out of the estate of her deceased paramour, although she has a husband living (who was examined in the case as a witness), provided she observes sexual fidelity to the deceased paramour after his death. It becomes, therefore, necessary to examine the Sanskrit medieval commentaries and digests in order to arrive at a correct interpretation of the expression '*avaruddha stri*'. Strangely enough, the Mit. does not define the word in the section on *dāyabhāga*, but only under '*stri-sangrahaṇa*'. Yāj. II. 290 provides, 'a man should be awarded a fine of fifty *paṇas*, if he has intercourse with *dāsīs* that are *avaruddhā* or that are *bhujisyā* and also (other women such as prostitutes and *sairipis*), even though ordinarily they (i.e. *dāsīs* and others) are approachable (without incurring the consequence of punishment)'. The Mit. explains that the word '*ca*' placed after '*bhujisyāsu*' in Yāj. II. 290 is meant to include *veśyās* and *sairipis* along with *bhujisyās*. Acc. to the Mit. the verse prescribes the same fine for intercourse with three kinds of women, viz. *dāsīs* that are *avaruddhā*, *dāsīs* that are *bhujisyā* and other women such as *veśyās* (who are ordinarily approachable by all males of their own or higher castes) and *sairipis* (who abandon their husbands and resort at their desire to some other male of their own caste, as defined by Yāj. I. 67). A woman though originally a *veśyā* or a *sairipi* may be known to be kept by a man. In that case if another man approaches her, Yāj. II. 290 declares that he would be liable to be fined in the same amount as if he approached an *avaruddhā dāsi* or *bhujisyā*, because being in the keeping of another at the time she would be like a wife (as the other two classes do) so far as punishment for approaching a kept woman is concerned. This verse is not concerned with the maintenance

1592. 36 Bom. L. R. 61.

1593. 48 Bom. 203 = 26 Bom. L. R. 63.

1594. 47 Bom. L. R. 5 (F. B.).

of women at all. The Mit. here defines 'avaruddhā dāsi' as "a slave woman who is prohibited by her master from intercourse with other men with an order to stay in the master's house alone in order that there may be no loss of attendance (on the master)." The Mit. defines a *bhujisyā dāsi* as 'one who is restricted (as to enjoyment) to certain definite males' (*parusamīyata-parigrahā bhujisyā*).¹⁵⁹⁵ It is worthy of note that the Mit. employs different phraseology in defining the two words. In defining a *bhujisyā* it employs the word '*niyata*', which generally means 'fixed or definite', while in defining 'avaruddhā' it employs the word '*niruddhā*' meaning 'prevented or prohibited'. If the two words were intended to convey the same meaning, there is no reason why the Mit. should not have employed the same word (*niruddhā*) in defining a *bhujisyā*. The difference between an *avaruddhā dāsi* and a *bhujisyā* is that the former is ordered to stay in the master's house, while the *bhujisyā* is not so ordered and secondly the *avaruddhā* is forbidden to have sexual intercourse with any one except the master, while the *bhujisyā* is not so forbidden, but she is to restrict herself to enjoyment by certain specified males (friends or men of the master's family) and not necessarily by the master alone. This is the meaning assigned to those words by Mitraniśra in his commentary¹⁵⁹⁶ (not his digest) on Yāj. II. 290. The Mit. itself indicates the meaning of '*niyata*' by saying elsewhere that ownership springs from certain fixed sources (*niyatopāyakaṁ svatvam* on Yāj. II. 114). It is respectfully submitted that the Privy Council gave a wrong interpretation of the word 'avaruddhā' in *Bai Nagulka v. Bai Monghba*.¹⁵⁹⁷ Though slavery is now abolished in India there is no reason why the two characteristics of *avaruddhā* (viz. staying in the master's house and being

1595. Vide note 1134 for वा. II. 290. उक्तस्तथा वर्णक्षियो दास्यस्ता एव स्वामिना ब्रह्मपादनिष्ठुदाभार्य एव तव स्वात्मनिषेधं दुश्चान्तरूपभोगतो निवृद्धा अव-
बद्धाः । दुश्चनियतपरिवृद्धा भुजिष्या । यदा दास्योऽवबद्धा भुजिष्या वा भवेत्तदा सासु । तथा
अवबद्धाश्च वेदसासौरेण्यिनामपि साधारणक्षियो भुजिष्याणां च ग्रहणम् । मित्रा. on वा.
II. 290.

1596. हीनो क्षीनित्युक्तमपवादति । अवबद्धास्मिन्पादि । दासी दुश्चनियतोपेन विवर्णा
परिवृष्टा च विषया । एकेन दुश्चनेन स्वभोगार्थं दुश्चान्तरूपभोगतो निवृद्धा, भुजिष्या वेदसा
चेति । भुजिष्या च स्वमित्रपुरुषान्तरूपभोगविषयः स्वपरिचर्याकारिणी । ... एवं च
सकामाया वेदसाया एकेन ब्रह्मभिर्वाभिमते दुष्ठाभावाः । अवबद्धाभुजिष्यचोरपि नियतदुश्चरयो-
भिमते दुष्ठाभावाः, सम्पात्तिरविधानादिति मित्राक्षरास्वरसः । मित्रमिश्र in com. on वा.
II. 290.

1597. 53 I, A. 133 = 30 Bom. 604.

exclusively kept by the master) stated by the Mit. should not have been strictly adhered to by the Privy Council, particularly when they were holding heirs liable for the maintenance of kept mistresses, which is hardly ever allowed in any other system of law. With the greatest respect to the Full Bench, it must be said they went wrong in holding that *bhujisya* means 'a mistress who is restrained from intercourse with other persons (other than the master)' and in holding that the only distinction between an *avaruddhā* and a *bhujisya* is that the former is required to stay in the house of the paramour, while the latter is not (47 Bom. L. R. at pp. 13 and 22). The learned judges have not correctly interpreted the word 'niyata' and also the explanation of 'bhujisya' given by the Bālabhāṭṭi¹⁵⁹⁸. The meaning of the Bālabhāṭṭi was misunderstood on account of the wrong meaning attached to the word 'niyata'. What the Bālabhāṭṭi means in explaining the definition of *bhujisya* is 'one who is to be enjoyed by certain definite males only other than the master' (i. e. by the master and also certain defined males) and it does not mean 'who is forbidden to be enjoyed by males other than the master'.

The F. B. further rely upon a passage of the Mit. in support of their conclusion (47 Bom. L. R. at pp. 14 and 22). On the question of what properties are impartible, the Mit. on Yaj. II. 119 quotes Manu IX. 319 viz. 'clothes, conveyances, ornaments, cooked food, water (wells &c.), women, *yoṣakṣema* and pastures (or ways)—these they der. are impartible.' The Mit. explanation¹⁵⁹⁹ of the word 'striyah' may be translated as follows: 'striyah' here means 'female slaves; if they are uneven in number they should not be divided by taking their price into consideration, but they are to be made to work in turns (for the separated members of the family), but as regards women kept by the father such as *svairinis* and the rest, they are not to be divided by the sons even though they be even in number'. It is difficult to see how this passage supports the Full Bench decision. That

1598. दुरधानेति । स्वभोगतां तु नेति भावः । दुरपेति स्वनिमित्तेत्यर्थः । बालभट्टी ०० वा. II. 290.

1599. लिप्यश्च दास्यो विधमा न मृत्युद्वारेण विभाज्याः पयोपेण कर्म कारयितव्याः । अवरुद्धास्तु पित्रा स्वैरिण्याया समा अणि पुत्रैर्न विभाज्याः । स्त्रीषु च संयुक्तास्त्विमाणाः—इति गौतमस्मृत्यात् । मिता. ०० वा. II. 119; the सुबोधिनी remarks, 'विज्वददस्वैरिण्याद्वीनां समानामप्यविभाज्यत्वे गौतमचर्चने दूरीयति स्त्रीषु च संयुक्तास्त्विति । संयुक्तास्तु उपयुक्तास्तु अवयवत्वमिति यावत् ।' अरुद्धता दृष्टे दद्व्याः दुरपेरातकारिभिः—इति तैत्तिरीयसंहिता । एष च दद्व्यामित्येव दृष्टेऽवरुद्धामित्यवधारणसंभवः । स्मृतिच. II. p. 321.

passage can be explained in two or three different ways. In the first place, the Mit. having itself clearly distinguished and defined three classes, viz. *avaruddhā*, *bhujisā* and *svairinī* (together with *veśyas* also) it cannot be lightly supposed that elsewhere it gives up that distinction. Therefore it would be difficult to say that here (on Yāj. II, 119) the Mit. means that *svairinīs* are also the same as *avaruddhās*. Hence the interpretation should be that women who are *avaruddhā* (kept exclusively by the father) and even other women also like *svairinīs* (who had sexual connection with the father though not as *avaruddhā*) should not be divided i. e. a 'ca' should be understood after '*svairinyādyaḥ*'. Or it is possible to hold that the word '*avaruddhā*' in that passage is not employed in the strict technical sense (as defined by the Mit. on Yāj. II, 290), but in its etymological sense meaning 'women who are *svairinīs* and the like that are taken into his harem (or under his protection) by the father should not be divided'. This interpretation derives support from the explanation offered by the Subodhini (which is repeated almost verbatim by the Bālabhāṭṭi) about the text of Gautama quoted by the Mit. that '*samyukta*' in Gaut. means 'enjoyed' or 'confined' (in the house). This shows that the words '*ruddhā*' and '*avaruddhā*' were used in the etymological sense by distinguished writers. The Sm. C. II. p. 321 while explaining the word '*ruddhā*' in Manu IX, 12 applied to a wife guilty of adultery explains it as meaning 'confined in a part of the house' (*gṛhe avaruddhām*). When the Mit. states (p. 811) that the verses of Nār. and Kat. refer to *avaruddhā* *stri* it follows that these verses do not refer to *bhujisā*, who would therefore be deemed not entitled to maintenance at all.

There is a large body of caselaw about the right of a widow in a joint Hindu family to reside in the family house, about the right of a daughter-in-law against her deceased husband's father who has no ancestral property in his hands and against the heirs of the father-in-law, about the amount of maintenance to be allowed to a widow and about the rate at which arrears of maintenance are to be allowed, about the period for which arrears may be awarded, about making the maintenance a charge on the estate in the hands of the heirs, about varying the rate of maintenance fixed by a decree or an agreement &c. These are not quite germane to the present volume, particularly because most of the decisions on these

matters are not based on the words of the smrtis or of the medieval digests, but are based on logic and principles of justice and equity. But there is one matter which deserves a passing reference. Ancient Hindu Law attached the highest spiritual importance to the payment of debts (vide pp. 414-417 above). Therefore debts contracted by a Hindu are held by the Courts to take precedence over the right of maintenance of a man's wife, his infant child or his widow after his death.¹⁶⁰⁰ Similarly debts contracted by the manager of the joint family of which the widow's husband was a member would take precedence over the widow's right of maintenance, provided the debts were for the benefit of the family or were for legal necessity.

The last *vyavahārapada* is *prakīrṇaka*, which is defined by Viṣṇu Dh. S. 42, 1 as 'miscellaneous' (*yadanuktam tat prakīrṇakam*) or by Nār. as matters that were to be set in motion by the king himself (vide note 331). These have been dealt with above and do not require any further treatment here.

At the end of this section on Vyavahāra it would not be out of place to say a few words about wills. Owing to the joint family system and the custom of adoption testamentary dispositions did not come into vogue in ancient India. Among the many kinds of documents (*lekhyā*) mentioned by Kaut., Br., Kāt. and others cited above there is no term for a document which can convey the idea of a modern will. But it need not be supposed that the idea had not at all dawned upon the minds of people before the advent of the British.¹⁶⁰¹ Wills were known among Mahomedans and contact with them would naturally suggest the idea of a will. Oral or written instructions by a man expecting death to his heirs intended to affect the disposal of his property must have been given occasionally and should not

1600. Vide *Lakshman v. Satyabhamabai* 2 Bom. 494 at pp. 499, 505; *Radhahai v. Gopal* 45 Bom. L. R. 980 at p. 991.

1601. In *Nagulutchmea Ummal v. Gopoo Nadaraja* 6 Moo. I. A. p. 309 the P. C. said (at p. 344): 'It must be allowed that in the ancient Hindu Law, as it was understood through the whole of Hindustan, testamentary instruments in the sense affixed by English lawyers to that expression were unknown; and it is stated by a writer of authority (Sir Thomas Strange) that the Hindoo language has no terms to express what we mean by a will. But it does not necessarily follow that what in effect though not in form are testamentary instruments which are only to come into operation and affect property after the death of the maker of the instrument were equally unknown.'

be supposed to have been entirely unknown. Verses 341-359 of the *Rājatarangini* IV, appear to embody the political testament of king Lalitaditya of Kashmir in the first half of the 8th century. Kat. (566) makes a very near approach to the modern conception of a will¹⁶⁰². He says, 'If a gift was promised by a man for a religious purpose whether when in good health or when afflicted with disease, the son should be made to pay it, if the father dies without giving it over.' Here the mere declaration of the intention of a person was made enforceable after his death against the son or other heir. Brhaspati's verse saying that a promise or direction to take effect after the death of the promisor was not ordinarily enforceable has already been quoted above (n. 823). In the quarterly of the *Bhārata-Itihāsa-saṁśodhaka* Mandala of Poona, vol. XX p. 210 (for May 1940) there is a letter (dated 1775 A. D.) written by one Naro Babaji, who, after referring to his illness, provides on a generous scale for his funeral and śrāddha expenses and makes dispositions in favour of his daughter-in-law, of another widow, and for the marriage of his kinsman's sons and distribution of the balance of his assets¹⁶⁰³.

1602. श्वशुरेभ्यो न वा देयं अन्तिमं धर्मकारणम् । अदृष्ट्वा तु पुत्रे द्वाप्यस्तत्पुत्रो नात्र संशयः । कात्या. १. ४. by अपराक p. 782, वि. चि. p. 16, स्व. मयूख p. 206. 'अन्तिमत्वा यदि दानमस्तु त्वेव सुतरादा तदापादैस्तदेषम् । अपश्यन्तो राज्ञा द्वाप्याः । एतच्च धर्मं प्रतिभवन्ते सति दृष्टव्यम् । अपराक p. 782.

1603. पाटी चिदंजीव राजाजी माधवराव पांति नारा बाबाजी अमिराव उयनि सन ११८५ मयस्यमान संवत्सरे आपले शरीर आज महिनाभर पेधा झाली आहे म जाले शरीराच्या भरवसा नाही आपला धर्माचा ऐवज अन्तकाळ येवरे देवळा आहे तो येणेभागे :

धर्म करावा भीतपशील

१००० आपले जिवंत असतां आपले हाते मायधीन व हिरण्यद्वारा मोडत येवरे पसंग आहवास करणारे

१००० क्रियेस लावले

५००० मासिक वर्षभ्रातृ मिलीन

× ×

१५००० आपले मयावर्जन व कारसील एक मागीचीदुरधरण व किरकोट धने

१००० पांमिवाय किरकोट धर्मे कारसीस अपसा आप्य देवां

× ×

४००००

(Continued on the next page)

One of the earliest wills to come before the British Indian Courts was that of the notorious Umichand¹⁶⁰⁴ (who died in 1758 A. D.). Bengal Regulation XI of 1793 recognized by section VI the power of a Hindu proprietor to make a will or declaration giving, prior or subsequent to 1st July 1794, his entire landed estate to his eldest son or next heir or other son or heir or to any person or persons. In a Bombay case the will of a Hindu made in 1789 is referred to¹⁶⁰⁵. A Pundit of the Recorder's court of Bombay gave it as his opinion in 1812 A. D., 'there is no mention of wills in our *Shāster*; therefore they ought not to be made' (vide Strange's Hindu Law, vol. II p. 449). In L. L. R. (1940) 1 Cal. 415 at p. 424 the Privy Council observe that the Hindu will in its present form is a development since the middle of the 18th century.

It is beyond the scope of this work to dilate on the modern Acts dealing with Testamentary dispositions such as the Indian Succession Act (Act 39 of 1925).

Now that the foregoing lengthy presentation of the ancient and medieval Hindu judicial procedure and substantive law has been brought to a close a few general observations may be indulged in here. The Hindu Law of pleading and evidence compares favourably with similar laws of many other countries and has extorted the admiration and encomiums of such

(Continued from the last page)

× ×

वासिवाय कलमे

१६०० राधाबाई सुन विजयाजी वला अजमासे पाया सहा तुजाराच्या आर्हत वासिवाय काहीस गेली आधवा आपले बापाचे बरी राहिली तर तीस रुपये द्यावे

१६०० तीर्थस्वयं दादाचे क्रियेस लावावे

१७०० माचेकून रत्नमाबाईस वर्षास पन्नासकरिता १० रुपये देवच आहा पुढे तुम्हापासोन जाईल तेव्हा तीस द्यावे

१७०० तुम्ही आपले तीर्थी सुटाचे लग्नास खर्च करावा

१७०० सद्वहयमाणे करावा

सद्वहय रुपये जाऊन बाकी राहिल त्यांत तुम्ही विडोबाचे व त्याचे बापकीचे आजमाबाजी देवच घालवार्चे पुढे तो थोर झाल्यावर कोणी त्यास बोर देईल आणि तो तुम्हापासून वेगळा निघे लागला तर बाकी मिळे त्यास द्यावे व तुम्ही निमे द्यावे. × × ×
The rest gives a history of the family and how the testator earned his fortune.

1604. The will is set out in an English translation in W. A. Montrieux's 'The Hindu Will in Bengal' (Calcutta, 1870) pp. 98.

1605. Vide *Jugmohandas v. Sir Mangaldas* 10 Bom. 328.

eminent Jurists and Judges as Sir William Jones, Sir Thomas Strange and others. For example, Sir Thomas Strange in 'Hindu Law' (1830) vol. I observes (at p. 311), "sufficient be it to observe that Hindu pleading was noticed with commendation by Sir William Jones and that, with some trifling exceptions, the Hindu doctrine of evidence is, for the most part, distinguished nearly as much as our own, by the excellent sense that determines the competency and designates the choice of witnesses with the manner of examining and the credit to be given them; as well as by the solemn earnestness with which the obligation of truth is urged and inculcated; inasmuch that less cannot be said of this part of their law than that it will be read by every English lawyer with a mixture of admiration and delight, as it may be studied by him to advantage. Even the *pious perjury* which it has been supposed to sanction^{1605a} being resolvable after all into no greater liberty than what our juries (not indeed with perfect approbation) have long been allowed to take, where the life of a prisoner on trial before them is at stake; credit is to be given to the pregnant brevity of the Hindu oath viz. 'what you know...declare at large and with truth' (Manu VIII. 80); as also to the noble warning, with which the subject as detailed by Manu is ushered in, that 'either the court must not be entered by judges, parties and witnesses or law and truth must be openly declared' (Manu VIII. 13)." The medieval digests made a very near approach to the modern ideal of equality of all men before the law. How even in the 20th century the much vaunted equality before the law of all people in England is far from being achieved and how it often proves quite illusory where the poor or the labouring classes are concerned is well brought out in a book entitled 'Justice in England' by a Barrister published by Victor Gollancz in 1938, especially in chapters I and VI. The Hindu jurists evolved tolerably clear and sound ideas about contracts, debts, deposits and pledges, sales, mortgages and gifts of immovable properties, developed a system of joint family rights and liabilities and laid down a peculiar law of inheritance and succession to males and females. The Hindu system of inheritance and succession

1605a. This is a reference to the texts of Gaut. 23.29, the Mahābhārata, Manu, Yājñavalkya and others cited on p. 353 above. Sir William Jones remarks (in Works, vol. VIII p. 443, ed. of 1807): 'In the great system of contracts and the common intercourse between man and man, the *Pootes* (*Poths*) of the Indians and the Digest of the Romans are by no means dissimilar'.

pursues a middle course. It does not distribute the estate of a deceased person simultaneously among several heirs as under the Mahomedan Law (where the widow, the father, mother, sons and daughters of a man take the estate together if they are all alive at the time). Nor did the Hindu system confine the descent to a single person among a group of heirs of the same degree and sex as in the English system before 1926 (where the eldest son succeeded to the real estate of an intestate person).

It has further been seen how the ancient and medieval Hindu rules as to debts, adoption, partition and inheritance have been moulded for over a century by Legislation and by decisions of the Privy Council and the Courts in India. Many persons feel that the time has now arrived for the codification of Hindu Law. A Committee presided over by Sir B. N. Rau has prepared a draft code which attempts to codify certain branches of Hindu Law. From several quarters there has been vehement opposition to this draft code. The objections raised are many. It is not possible to deal here with the several objections in detail. But some of them which raise questions of fundamental importance will have to be briefly stated and answered. The first objection is that in view of Queen Victoria's proclamation of 1858 the Indian Legislature should not interfere with the customs and usages of the people that are part and parcel of the Hindu religious system. But this objection is hollow and unsubstantial and conveniently ignores what has happened during the last hundred years or so. All that the Queen proclaimed was: 'Firmly relying ourselves on the truth of Christianity and acknowledging with gratitude the solace of religion we disclaim alike the right and the desire to impose our convictions on any of our subjects. We desire it to be our royal will and pleasure that none be in any wise favoured, none molested or disquieted by reason of their religious faith or observances; but that all shall alike enjoy the equal and impartial protection of the law; and we do strictly charge and enjoin all those who may be in authority under us that they abstain from all interference with the religious belief or worship of any of our subjects on pain of our highest displeasure.' Notwithstanding the noble sentiments expressed here, the Indian Legislature both before and after the proclamation passed numerous laws that more or less impinged upon or affected the religious theories, sentiments and practices of millions of Hindus! The following is a list of some of the important laws of this character which will convince any one of the fact that

people have always submitted to laws passed by the Governor-General or the Legislature that prevented them from carrying out their cherished ideas and practices; Regulation XVII of 1829 which declared the practice of *Sati* illegal and a crime punishable by the courts; the Caste Disabilities Removal Act (XXI of 1850); Hindu Widows' Remarriage Act (XV of 1856, which legalises the marriages of Hindu widows notwithstanding any custom or interpretation of the Hindu Law to the contrary); the Indian Penal Code (XLV of 1860, which makes sexual intercourse by a man with his own wife that is under thirteen years of age punishable as rape); the Child Marriage Restraint Act (XIX of 1929), which makes the marriage of a male below 18 and of a female below 14 punishable as a crime; the Hindu Inheritance (Removal of Disabilities) Act (XII of 1928) which sets aside the *Mitākṣarā* rules about exclusion from partition and inheritance except in the case of those that have been lunatics or idiots from birth; the Hindu Law of Inheritance Amendment Act (II of 1929, which enables the son's daughter, daughter's daughter, sister and sister's son to succeed under the *Mitākṣarā* in that order after the paternal grandfather and before a father's brother); the Hindu Gains of Learning Act (XXX of 1930); the Hindu Women's Rights to Property Act (XVIII of 1937, which enables the widow of a deceased member of a joint Hindu family to succeed to the interest of her husband in the joint family property and to succeed to her deceased husband's separate property for the same share as that of a son). The Privy Council claimed more than 70 years ago that 'the British Government by virtue of its sovereign power asserted, as the former rulers of the country had done, the right to visit endowments of this kind (viz. temples) and to prevent and redress abuses in their management' (*Rajah Mutlu Ramalinga v. Perianayagam* 1 I. A. 209 at p. 232). Non-Hindu Judges of the Privy Council and the High Courts have been interpreting and laying down the Hindu Law for over a hundred years and on many points the law declared by them has thoroughly changed the law of the *smṛtis* and *digests*. If all this has been allowed to happen without hardly a demur, there is apparently no satisfactory or convincing reason why an elected Indian Legislature the majority of whose members are likely to be Hindus should not pass an Act dealing with Hindu Law.

Another objection raised even by some retired judges of the High Court is that the present system of laying down the

Hindu Law by means of judicial decisions is quite satisfactory and there is no need of a code of Hindu Law. This objection merely shows that change is rather a painful process for most men. The present method may be a veritable El Dorado or paradise for lawyers and busy bodies fomenting longdrawn litigations. One must stand appalled at the colossal expenditure of time, labour and money which must have been involved during the last hundred years or more in fighting out doubtful points of Hindu Law from the lowest court to the Privy Council. It not unfrequently happens that after a point had been settled by a Full Bench decision of a High Court and after common people and lawyers had followed the law thus settled for fifty years the Privy Council upsets the decision on an appeal by an enterprising litigant. For example, the Bombay High Court decided in 1879 in *Ranji v. Ghaman* (6 Bom. 498) that the adoption by the widow of a deceased co-parcener, who had not her husband's express authority to adopt, was invalid, if made without the consent of the surviving co-parceners. But in 1932 the Privy Council held that *Ranji v. Ghaman* was wrongly decided and that a widow can adopt without her husband's express authority and even in the teeth of the opposition of the surviving members of her husband's family. And when an appeal was made to the principle of '*stare decisis*' the Privy Council was pleased to observe, 'It was pressed on their Lordships that *Ranji v. Ghaman* had been accepted and acted upon in the Presidency of Bombay since 1879 and that the decision should not be disturbed. But this is a belated appeal. It should have been made when *Yadav v. Namdeo* was before the Board.' To ordinary minds this dictum, speaking with the utmost respect, appears strange. If for some reason or other a certain line of argument is not placed before the Privy Council by the counsel of a private party and a wrong decision is given, is it to be supposed that all litigants are to be precluded from trying to set the wrong decision right for all time to come? The Privy Council has not seldom set right a wrong decision given by the Board in a prior appeal. In *Sahu Ram v. Bhup Singh* 44 I. A. 126 the Privy Council held that the pious duty of the son to discharge his father's or grandfather's debts does not attach while the father or grandfather is alive; but in *Brij Narain v. Mangla Prasad* 51 I. A. 129 the Privy Council held (at p. 134) that the pious duty is always there irrespective of the question whether the father or grandfather is alive or dead.

Others opine that one Code for the whole of India is not and cannot be a practicable proposition. In support of their objection they rely on the existence of the several schools of law now prevalent in the whole of India. If India desires to be a self-governing political unity in the future, there is a compelling reason why it should be governed by a single Code of Hindu Law, as it has been governed and will be governed in other substantial provinces of law by codes applicable to all alike. That will help in the direction of solidarity and will be of some use in doing away with fissiparous tendencies. There are really only two schools of Hindu Law. And the unification of Hindu Law will be helped by the abolition of the right by birth which is the cornerstone of the *Mitākṣarā* school and which the draft Hindu Code seeks to abolish. Many people are vehemently opposed to the change. But they forget that, what with the rule that any member of a joint Hindu family may alienate his interest for value, what with the *Gains of Learning Act*, the *Hindu Women's Rights to Property Act* and other enactments, the real core of the ancient Hindu family system has been removed and only the outer moribund shell remains (vide p. 604 above). Some are opposed to giving along with sons a share to daughters, particularly to married daughters. But here a compromise may be effected by allowing a share to unmarried daughters alone (as *Yāj. II. 124* and the *Mitākṣarā* thereon expressly provide).

Another provision in the draft Hindu Code which has come in for severe animadversion is the provision that a woman even when taking by inheritance an estate from a male or by partition should be held to become absolute owner thereof. In the first place, if a man's agnate of the 13th degree or a male cognate up to the 5th degree takes an estate absolutely and may squander it away as he pleases, one fails to see why his own widow should not have a like power in the 20th century, whatever may have been the view of ancient works. In the second place, this objection can be met by means of a compromise, viz. that a widow inheriting her husband's estate will take only a limited estate if at the time of her husband's death any one of the compact series of heirs or any direct lineal descendant of her husband (such as a son's daughter or daughter's daughter) be alive, but she will take an absolute estate if none of these exists. Such a compromise should allay all fears about the widow unfairly disposing of the estate against near relations

like the daughter or daughter's son or husband's brother &c. There are numerous other objections, but they are in matters of detail and if once it is agreed that there should be a Code of Hindu Law passed by the Indian Legislature these matters of detail may be adjusted to the satisfaction of most people.

Similarly serious objections are raised to the provisions of the Code as regards marriages and divorce. The draft code proposes to do away with the prohibitions based on sameness of gotra and pravara. This is a desirable change and being optional should not be opposed. Some reasons for this change have been advanced in H. of Dh. vol. II. p. 498. Besides, this provision will affect only a small percentage of the Hindu population. Similarly the insistence on monogamy is opposed by many. In this case some compromise may be arrived at as regards classes to whom two wives are an economic advantage. The provisions about divorce have been overdue. Among the higher castes no divorce has been allowed on any ground whatever. Many hard cases occur where there is no redress and the draft code proposes to give relief in such cases.

On the most contentious subject of adoption the draft code, it is satisfactory to note, has made certain provisions which are in line with the suggestions put forth by me in note 1338a above.

Compelling reasons exist why Hindu Law should be codified as early as possible. Men naturally desire that they should have easy access to the laws by which they are to be governed in all their actions, dealings and relations. It is hardly a commendable or desirable state of things that people should be forced to consult lawyers or bulky textbooks every now and then and even in small and simple matters. The general outlines and provisions of Hindu Law must be within easy reach of every intelligent or inquiring Hindu. This can only happen if there is a code for all Hindus or, if that is deemed impracticable for the present, at least for a large province or for a number of provinces.

CHAPTER XXXII

SADĀCĀRA

CUSTOMS AND MODERN CUSTOMARY LAW¹⁶⁰⁶

From Gautama^{1606a} downwards many writers dilate upon the sources of *dharma*. Gautama I. 1-2 states: 'the Veda is the source (*mūla*) of *dharma* and also the tradition (or *smṛti*) and practice of those who know the Veda'. Similarly Āp. Dh. 8. (I. 1. 1. 1-3) says: 'we shall propound the acts (that produce merit) which are evolved from conventions and practices; the authority (for finding out the *dharma*s) are the conventions of those who know the *dharma* and the Vedas'. Vas. I. 4-7 provides: 'dharma is declared by the Vedas and *Smṛti*s; on failure of these two the practice of the *śiṣṭas* is the authority (for finding out what *dharma* is); a *śiṣṭa* however is one whose heart is free from (worldly) desires and (only) such acts of *śiṣṭas* are (to be held as) *dharma* for which no (worldly

1606. This chapter and the next represent, with a few minor additions, two of the four lectures I delivered in November 1944 at the Bombay University as the Sir Lallabhai Shah Lecturer. I am thankful to the Syndicate of the Bombay University for permission to incorporate these two lectures in this volume.

1606a. वेदो धर्ममूलम् । तद्विद्वो च स्मृतिशीले । गौ. I. 1-2; अपाङ्ग सामवाचारिकान्धर्मान् मूलवाक्यानाम् । धर्मज्ञसम्पदः प्रमाणं वेदाश्च । आप. घ. सू. I. 1. 1. 1-3; अतिस्मृतिविहितो धर्मः । तद्वलाभे शिष्टाचारः प्रमाणम् । शिष्टः पुनरकामात्मा । अष्टाश्वमेधकारणो धर्मः । वसिष्ठ I. 4-7; अतिः स्मृतिः सदाचारः स्वल्प च विप्रमात्रतः । सम्प्र-
कृतमूलपत्रः कामः धर्ममूलमिदं स्मृतम् ॥ वा. I. 7; वेदोऽखिलो धर्ममूलः स्मृतिशीले च तद्विद्वाम् । आचारश्चैव साधुनामात्मनस्तुष्टिरेव च ॥ मनु I. 6. हरदत्त explains *mūla* in Gaot. as *pramāṇa* and *sāmavācārikān* as 'वैदिकेभ्यो व्यवस्था समकः स च विविधः विधिनियमः विविध इति । सम्प्रमूलः आचारः समवाचाराः तेषु नञः सामवाचारिकाः एवं-
भूतात्मनिति । कर्मजग्नोऽप्युदयनिःश्रेयस्तद्देहसुखपूर्वस्य आत्मसुखो धर्मः'. According to him *sāmavācārikān* means relating to practices based upon agreements or conventions. Manu distinguishes between *śīla* and *ācāra*. The first means, acc. to Kullūka and others, such moral qualities as 'devotion to learning, to gods and to parents' &c. mentioned in *Hārta* (quoted by Kullūka). All commentators connect 'avasya' in Manu II. 12 and Yāj. I. 7 with 'priyam', but Pandit Gargalal connects it with 'sadācāra' which means according to him 'sampradāya' (In *Satsiddhāntamārtanda* I. 5 p. 49, Nir. ed. 1942).

or secular) cause (or motive) can be assigned'.¹⁶⁰⁷ Manu II. 6 and Yāj. I. 7 declare that Veda (or śruti), smṛti and the practices of the good are the principal sources of dharma. The words employed in these works are *śīla*, *saṁnya*, *ācāra* or *śulācāra* or *śiṣṭācāra*¹⁶⁰⁷ (the latter three meaning the same thing). Āp. employs both words viz. *saṁnya* and *ācāra*, the first of which probably means 'agreement or convention or usage', while the latter means 'custom'. The word 'custom' now conveys the idea of some antiquity,¹⁶⁰⁸ while usage or convention does not necessarily convey that idea. A usage may be recent or it may be established by agreement among a certain class of persons (such as traders or craftsmen). We have to see what is meant when it is said that *ācāra* or *śiṣṭācāra* or *śulācāra* is the source (mūla) of dharma. An indication of the meaning is furnished by the word *pramāṇa* employed by Āp. and Vas. The meaning is that just as the revealed books (Veda) and the smṛtis authoritatively lay down what dharma is, so also in our quest to find out what dharma is in the varying circumstances of life the practices of those who may be called *śiṣṭas* furnish us with the necessary criterion or norm i.e. *śiṣṭācāra* is the touchstone for judging whether an act is in consonance with what the śāstras require us to do. The theory of the ancient writers was that the smṛtis were based on parts of Veda (that consists of *mantras* and Brāhmaṇa texts) which though formerly existent are not now extant or available, that similarly the practices of those who were learned in the Vedas and were deemed to be *śiṣṭas* must be inferred to have been based on portions of Veda not now available. This theory was advanced by such ancient

1607. As to the qualifications of *śiṣṭas*, vide H. of Dh. vol. II, pp. 271-72 where references are given to Baud. Dh. S., Manu, the Matsyapurāṇa and a few other works. The Tai. Up. I. 11 contains perhaps the oldest extant indication as to who should be regarded as *śiṣṭas*, though that word itself is not used. अथ यदि ते कर्मविचिकित्सा वा वृत्तविचिकित्सा वा स्यात् । ये तत्र बाह्यणाः संमतिनः युक्ता आहुक्ता अतृप्ता धर्मकामाः स्युः स्या ते तत्र वर्तेन् तथा तत्र वर्तेयाः । अथाभ्यारुणातेषु । ये तत्र बाह्यणाः ... धर्मकामाः स्युः स्या ते तेषु वर्तेन् तथा तेषु वर्तेयाः ।

1608. Vide *Dalglisch v. Gnauffer* 23 Cal. 427, 429 and *Sariatullah v. Pran Nath* 26 Cal. 184, 187 for the meaning of usage in modern enactments as distinguished from 'custom'. In *Jugomohun Ghose v. Manickchand* 7 Moo. 1. A. 254 at p. 282 (mercantile) usage is sharply distinguished from custom in that the former need not possess the characteristics of antiquity, uniformity and notoriety that the latter must possess.

writers as Āp.¹⁶⁰⁹ and was taken up by many subsequent works. Manu II. 7 also states that whatever dharma has been ordained for any person by Manu, all that has been entirely declared in the Veda for the Veda is full of all knowledge. But it does not follow from this nor is it ever meant that all practices of *śiṣṭas* are authoritative in matters of dharma. The qualification was added that where the practices of *śiṣṭas* are clearly referable to or are prompted by a seen motive or by the desire to secure pleasure, there they are not authoritative. Manu (II. 18) restricted the word *sadācāra* to the customs handed down from generation to generation among the four varṇas and the mixed castes in the country called by him *Brāhmāvarta* (II. 17). But many other writers did not so restrict it in this way.

We have to distinguish between what are called the sources (*mūla* or *pramāṇa*) of dharma and the *sthūnas* of dharma (Yāj. I. 3 and 7).¹⁶¹⁰ The former indicate to the inquiring spirit what dharma is (i.e. they are what are called *jñāpaka hetu*), while the latter must be studied as aids by the expounders of dharma in order to correctly grasp what dharma is, i.e. the different lores (other than Veda and *smṛti*) are not directly the sources of dharma, but are only mediately so. This distinction is an ancient one as even Gautama XI. 19 provides that the king is helped in his administration of justice by the Veda, the *dharmaśāstras*, the auxiliary lores (*aṅgas*), the *Upavedas* and the *Purāṇa*.¹⁶¹¹

The position of the *Pūrvamīmāṃsā* in relation to the authoritativeness of *smṛtis* and customs requires careful and

1609. आर्षसमयो ह्यनुष्ठानकारणः । ... बाह्यलोका विधत्स्तेषामुत्सन्नाः पादाः प्रयोगादुत्तुर्गम्यन्ते । यत्र तु योऽनुपलब्धितः प्रवृत्तिर्न तत्र शास्त्रमस्ति । तदनुवर्तमानो नरकाय राक्षसि । आप. ध. सू. I. 4. II. 8, 10-13. The first *śūtra* may be used for explaining Vas. I. 4; *सुष्ठानकारण* means 'that has a known or perceptible worldly motive such as covetousness'. Vide note 1653 below. Compare जै. I. 3. 7 अपि वा कारणमाद्यहणे &c. quoted below.

1610. दुराणस्यायमीनां साधर्मशास्त्राङ्गानिञ्जिताः । वेदाः स्थानानि विद्यानां धर्मस्य च अनुवृत्तं वा. I. 3, on which Mitter. says, धर्मस्य च अनुवृत्तं स्थानानि हेतवः । एताभिः च वैयर्थिकैरस्त्वैतानि, while Mitter. explains, 'विद्यानां पुरुषार्थसाधनज्ञानावायम् । अत एव धर्मस्यापि स्थानाभ्युपगमाः विद्यायाः बहुविधारा धर्मप्रयोजकत्वात्.' On I. 7 Mitter. says, दुराणादीनां स्वर्गादिकामाध्यायवृत्तिहासबहुलत्वेनापेक्षादादिकपक्षतः स्वायमीनां स-पोस्तर्कद्वारा निष्ठावृत्तिनामङ्गानां तदनुपकारसम्पादनेन वेदानुयायकतया धर्मं यामानर्थं न साक्षादिति न शास्त्रञ्च यमिताम् ।

1611. तस्य च व्यवहारो वेदो धर्मशास्त्राङ्गानामुपवेदाः दुराणम् । मी. XI. 19,

detailed consideration. In I. 3. 1-2¹⁶¹² Jaimini considers the question whether such *smṛti* injunctions as 'one should perform the *Aṣṭakā śrāddhas*',¹⁶¹³ or 'one should construct a tank or set up a *prapā* (place for free distribution of water to thirsty travellers)', or 'tufts of hair should be kept on the head' (at *caula* according to the *gotra*) are authoritative and establishes the conclusion that they are authoritative, since such *smṛti* injunctions equally with Vedic ones are addressed to the same persons (*viz.* the followers of the Veda) who have to act according to them. The idea is that those who perform the acts expressly enjoined by the Veda are also seen to perform the acts enjoined by such *smṛtis* as that of *Manu* and therefore the principal reason why these *smṛtis* are authoritative is the fact that those who know the Veda accept these *smṛtis* as authoritative and hold fast by them, as *Medhātithi* on *Manu* II. 6 says citing some verses from his own work called *Smṛtivilēka*.¹⁶¹⁴ Śābara endeavours to show that there are indications (*liṅga*) in the Vedic texts pointing to the existence of what is prescribed in the *smṛtis* e.g. he cites the Vedic verse 'yām janāḥ' as indicative

1612. धर्मस्य शब्दमूलत्वाद्वाच्यमनपेक्षं स्यात् । अपि वा कर्तुं सामान्यापमानमनुमानं स्यात् । जै. I. 3. 1-2. The word अनुमान is here used in the sense of स्मृति. 'अपि वा पक्षो व्यावर्त्यते । प्रमाणं हि स्मृतिः । ... शब्दस्य च नवीने कर्तुं सामान्यापमानमनुमानं स्यात् । तेनोपपन्नो वेदसंयोगवैयर्थ्यादिति ।' *अथर्व*, about अष्टका he says 'अष्टकादिद्वयाच्च मन्त्रा वेदे दृश्यन्ते वा' जनाः प्रतिनन्दन्ति चेत्वेमादयः ।'. That verse is, वा जनाः प्रतिनन्दन्ति रात्रिं धेनुमिवायतीम् । संवत्सरस्य वा पत्नी सा नो अस्तु सुमङ्गली । This occurs in आप. न. वा II. 10. 27, in पारस्करयजुष III. 2 and in अथर्ववेद III. 10. 2 where we have वा देवा etc. Acc. to प्रभाकर the topic of Jai. I. 3. 1-2 is not such *smṛti* texts as those on *Aṣṭakā*, but the Vedic verse वा जनाः itself. The व्यापसुपा p. 136 adds 'अष्टकापि सुरापसे स्यादिति तस्याष्टकादेव तारात्रियकाशकलादेवा वै संवत्सरस्य पत्नी पदच्छेदति संवत्सरपत्नीत्वसंस्तुताष्टकान्काशकलाश्चाष्टकादिद्वयं स्पष्टमेवेति'. The word कर्तुं सामान्यात् in the sūtra is explained in the मयूखनाटिका as 'औग्रहीकादीनां वैदिकपदार्थानां ये कर्तारस्त एव अष्टकादिस्मृतिनामिति कर्तुं सामान्यापमानमनुमानम्' (on जै. I. 3. 4 p. 27); while the व्यापसुपा (p. 125) proposes also another explanation 'यदा स्मृतिकर्तृणां मन्त्रादीनां वैदिकपदार्थकर्तृणां तदानीं विमानं शिक्षायां वैयर्थ्यात्वेन समानत्वात् तदानीं तदनुमानादीनामनुपपन्नो वेदसंयोग इत्यर्थः'.

1613. Vide *Āśv. Gr.* II. 4. 1 ff., *Sān. Gr.* III. 12-14, *Pār. Gr.* III. 3 for *Aṣṭakā śrāddhas*. Passages of the *smṛtis* about tanks and *prapās* are set out in H. of Dh. vol. II pp. 889-890. For tufts of hair kept in *caula* vide H. of Dh. vol. II. pp. 261 and 264.

1614. वैदिकैः स्मवेमान्वाच्यपरिहृद्वाच्यैः । सामान्यवेदमूलत्वात्स्मृतीनां वेदमूलता । quoted in the शास्त्रदीपिका on जै. I. 3. 2. 'स्मार्तवैदिकयोर्वैद्यं स्यादित्युक्तपरपरम् । कर्तुः कर्मतो वापि विपुल्येन न जातु तौ । ... सामान्यकारणं मुख्यं वेदविज्ञिः परिहृतः । तदुक्तं कर्तुं सामान्यादनुमानं श्रुतिः प्रति इति ।' from स्मृतिविवेक by मेधा. on मनु. II. 6.

of *astakās*, Rg. X. 4. 1 of *prapās*, Rg. VI. 75. 17 of tufts of hair. The objection may be stated as follows:—The *smṛtis* are composed by human authors (i. e. they are *pauruṣeya*) and so have no independent authority in matters of *dharma*, as a man may say what is either false or mistaken. If it be said that the *smṛtis* really propound what is stated by the Veda, then they are practically superfluous and useless, and not being Veda they should be discarded (*anapekṣa*). To this the reply is that *smṛtis* are generally authoritative, as they must be held to be based on Veda because they are composed by men (like *Manu*) who were followers of the Veda, because what the *smṛtis* lay down has been consistently followed from generation to generation by the *śiṣyas* and because it is possible to regard the Veda as their source. To the question why the Vedic passages on which the *smṛti* rules are postulated to have been based are not seen or found by us several answers were proposed by different writers. One view was that just as Vedic indications about locks of hair lead to the inference of *śruti* texts enjoining the keeping of tufts on the head, so the fact of the existence of such rules leads to the inference that *śruti* must have contained injunctions corresponding to all *smṛti* prescriptions. *Kumārila* raises objections to this view. Inference is based on perception (*pratyakṣa*) and invariable concomitance (*vyāpti*). There is no *vyāpti* between the *smṛtis* and *śruti* texts that are never found pronounced by any one, so no inference is possible and it would be like one blind man following another.¹⁶¹⁵ *Manu* must have composed his *smṛti* on finding that *ācāryas* preceding him performed certain acts as based on Veda. These last must have believed that their predecessors also acted on the same belief. Hence there is what is called an 'andha-paramparā' on this hypothesis. And further this hypothesis of the inference of *Śruti* in all cases is opposed to perception, since as a matter of fact hundreds of *Śruti* passages are known that can be the basis of corresponding *smṛti* texts. Another view is (and *Kumārila* holds that it is somewhat better than the preceding view) that one should infer that the Vedic passages that were the basis of *smṛtis* are lost (*utsanna* or *pralīna*). Some support is lent to this by such Vedic texts as 'anantā vai vedāḥ' (*Tai. Br.* III 10.

1615. तत्रैवुकमन्त्रपरम्परान्वायदिव । वा हि चोदना न कदाचिदुच्चापते तस्याः सर्वपुरुषभक्त्यादिमन्त्राभावाद् दुर्लभतरमस्ति तन्म । ... त्रिहोदीनां तु निरपलाक्षितयमनुच-
रित्युत्पत्तिमानकारणमस्ति दृष्टम् । तेन चरे पत्नीनष्टुरयमुवाचमेव । तन्त्रवास्तिक p. 164 on
जै. I. 3. 2.

11) and by Āp. Dh. S. I. 4. 13. 10. Even this view is not acceptable to the Tantravārtika and most of the Mīmāṃsakas. The objection against the 2nd view is raised as follows. Even Buddhists and other heretical sects¹⁶¹⁶ would advance the argument that their works also are based on śruti texts that are now lost, and any one may regard anything as authoritative by pretending that the basic vedic texts are lost. Further the Mīmāṃsā view that the Veda is eternal (*nitya*) would be refuted if it were admitted that some portion of the Veda is lost. There is not much difference between the first view and the second view. Therefore Kumārila propounds the third view viz. that smṛtis are to be inferred as based on Vedic texts that are already in existence¹⁶¹⁷. If an objection is raised against this hypothesis that it must be explained why such Vedic texts (the bases of smṛtis) are not seen or found, the Tantravārtika replies in a famous *kōrikā* that as the Vedic *śākhās* (the several branches of the Veda) are scattered about (in various countries), as men (followers of the Veda) are negligent and unmindful (i.e. they do not visit all the countries and so are unable to have a complete knowledge of all Vedic texts) and as several rules are declared in different contexts even when occurring in the same *śākhā* (and not at one place) it is not always possible to point out the Vedic sources of smṛti texts. If an objector were to ask: 'why were not the Vedic passages themselves (that are the sources of smṛti rules) embodied bodily into the smṛtis,' Kumārila replies that this was not done from the fear of the loss of the correct arrangement of the Vedic texts as traditionally handed down. The Veda is principally concerned

1616. यदि तु मलीनशास्त्रामुल्लङ्घयन्तः कल्पयेत् ततः सर्वासां ब्रह्मविद्भूतानामपि तद्वहारे परमाण्वे प्रसज्यते । परदेव च यदभिप्रेतं स एव तत्त्वहीनशास्त्रामुल्लङ्घयन्ति निमित्तं परमाणीकुप्यते । नन्ववार्तिके p. 163 : नित्याहुर्मेषयो को वाच्यवानमपरम्परः । तयोरेक्यवशात् न भेदः कश्चिद्विद्यते । स्मृतिविवेक q. by मेधा. on मनु II. 6.

1617. यद्वा निष्प्रमाणशास्त्रगतधृतिमूलत्वेनास्तु । कथमनुपलम्बितेति चेदुच्यते । शास्त्राणां विषयीकृतानुसङ्गाणां भ्रमादित् । मानामकरणस्यान्तरास्मृत्युल्लंघन इवपि न इवपि न इवपि किमपि वेदवाक्यान्वये योपसङ्गहीतानीति । संप्रदायविनाशभीतिः । निश्चिदाहपूर्व्यां हि स्वाध्यायोऽपेक्षया श्रूयते । समाज्ञाश्चाराः कश्चित् कश्चित्कर्तव्यविशेषाश्चाप्य । तथापि तु कश्चित्पुण्यमेवाधिकृतव्याप्तमान्यते । येन कतुपकरण्यमानाः केनचिन्निमित्तेनाह्वयमाणाः पुरुषधर्मा भजन्ते । यथा—मलयद्वास्तु सद्य न संवेदेत्—तस्माच्च मलयद्वास्तुसंवेद—इत्येवमादयः । तच्च यदि साधनान्येव वाक्यान्पुण्यध्यापयेदुस्ततः कमानुपलब्ध्याध्यापयितुं विरोधः स्यात् । अनेन च निर्देशान्तरेऽर्थताद्वैतविधिमात्रमधीयीत कर्मोपयुक्तमाध्यापयितुं चेदुच्यते । तच्च वा. on जै. I. 3. 2 p. 164. For मलयद्वा &c. vide मै. सं. II. 5. 1-5 and for तस्माच्च &c. मै. सं. II. 6. 10. 2 (q. in H. of Dh. vol. II p. 803 n. 1917 and p. 131 n. 346 respectively).

with sacrifices, though now and then there are rules addressed to men for regulating conduct only. People would only study the Vedic sentences contained in the smṛtis (that are concerned principally with conduct) where they would be arranged in a different order according to subjects and there would thus be loss of the arrangement of the Veda as originally delivered. Viśvarūpa¹⁶¹⁸ (on Yaj. I. 7) quotes the above verse of Kumārila and states that there are thousands of smṛti rules that have their source in the Veda; he and Kumārila instance the rules against talking with (or coming in contact with) a woman in her monthly illness or the rule against assaulting a brāhmaṇa, or the rule about the sin of killing an āśreyī woman &c. Medhātithi on Manu II. 6 has an elaborate discussion on this very topic and quotes several verses from his own work called Smṛtiviveka¹⁶¹⁹. He does not approve of the first two views and follows Kumārila's view. Mīmāṃsa writers and commentators like Medhātithi say that Manu and other authors of smṛtis brought together for easy comprehension matters that are scattered about in the various Vedic texts, that are either not known to the students of the several śākhās or that cannot be brought together by men of ordinary or weak intellect.^{1619a}

The general proposition that smṛtis are authoritative being established, a further question arises. What is to happen if a smṛti rule conflicts with the rule of the Veda? Jaimini deals

1618. स्मृतिमूला हि विधयः सन्ति वेदे सहास्रशः । संयद्वाग्विनासात् भूतिः साक्षाद्व-
संहतिः ॥ दण्डदण्डस्तु वपातीर्षं नटवद्वाससा सह ॥ न संयसेद्विति विधिः स्मृतिमूलत्वसंगतः ॥
आत्रेया योषितैरनर्थी भवेद्वा पातयितेत्यपि । वृत्तं तस्माद्विनिर्वाह्य नापक्रामेदित्येति च ॥ अमा-
रस्य च सौतर्ज्यं द्विरप्यं भार्गमिन्द्रपम् । स्यसंपत्तये चैवं भविष्ये सुवाससा ॥ शिष्यस्य ०० वा.
I. 7. pp. 14-15.

1619. शाखाः काश्चित्समुत्पन्नाः पक्षो नैव सतो मम । पक्षेतिजन्मान्ते हि बहवस्ते
पस्यन्ते । उपपन्नतः पक्षो विहितानां तावन्तः । उत्तरपाद्विसमाहारः नापक्षो ह्यपते द्वायः ॥
मेधा. on संतु. II. 6.

1619a. अथाद्यने पक्षस्त एव ताः शाखाः किन्तु विपक्षीर्णतैः धर्मोः कस्यांचित्परा-
स्वाध्यामसहाद्रीनां कर्मणामुपपत्तिः कस्यांचिद्व्याप्यं कश्चिदेवा कश्चिन्मन्त्र इत्येवं विपक्षीर्णानां
मन्वाद्युपेक्षोपसंहारं ह्यव्याप्योपार्थं चक्राः । मेधा. on संतु. II. 6; उपपन्नान्त एव स्मृतिमूलवृत्ताः
सुततः संयत्यपि विपक्षीर्णाः काश्चिद्विपक्षयोश्चिन्ताशयां विपक्षीर्णतापच शाखान्तरास्वा-
धिभिः शाखान्तरगतानामनुपपत्त्यभावात् तादृशैर्नार्थशब्दव्याप्यं तदुपलभ्येति वा मन्वादीनि-
त्युपसंहारणीयानामुपसंहारकतं स्मृतिव्याप्यमिति न वैपर्यवस्यत स्मृतयः प्रमाणमिति सिद्धम् ।
शास्त्रदीपिका.

with this question in I. 3. 3-4,¹⁶²⁰ which form a topic that states an exception to the general rule contained in Jai. I.3.1-3. Śābara gives three instances where there is apparently a conflict between the prescriptions of the śruti and those of smṛti. The Veda says, 'the priest should chant (the *stotra*) after touching the *audumbari* post', while smṛti says 'the whole of the *audumbari* post should be covered with cloth'. The Veda says 'one to whom a son has been born and whose hair is still dark (and has not turned gray) should consecrate the Vedic fires', while smṛti says 'a man should observe Vedic studenthood for 48 years'¹⁶²¹; the Veda says 'when the Agnisomya rite is finished then one may eat (the food prepared) in the house of the sacrificer', while smṛti says 'the food of one who has undergone dikṣā for a sacrifice may be eaten after he purchases the soma plant'. In these cases the proposition enunciated by Jaimini is that 'in case of conflict (between an express śruti rule and a smṛti rule) the smṛti rule should be discarded, for when there is no conflict (with an express śruti) inference may be made (that a smṛti rule is based upon some Vedic text).' The examples may be explained as follows: The '*audumbari*' is a post of *udumbara* planted in the *sadas* in the performance of the Agnistoma; the *stotras* (other than *Bahispavamāna*) are chanted near the *audumbari* post in the *sadas*. Vide H. of Dh. vol. II. p. 1155 for the fixing of the *audumbara* post in the *sadas* and p. 1185 for the chanting of *stotras* near the *audumbari*. If the whole of the post be covered with cloth, it would not be possible to touch the post, but only the cloth would be touched. So there is contradiction. If a man is to consecrate Vedic fires when he has a son and his hair is dark, he must be between about 20 and 40 (i. e. a young man), but if a man were to observe *brahmacarya* for

1620. विरोधे त्वमेवैषां स्यादुसति ह्यनुमानम् । हेतुदर्शनाच्च । जै. I. 3. 3-4: अथ यच्च स्मृतिविरोधस्तत्र कथम् । यथौदुम्बराः सर्वेष्टनं 'ओदुम्बरीं स्पृष्ट्वा प्रायेत्' इति श्रुत्या विद्वद्भ्यः । अथाचत्वारिंशद्वर्षाणि वेदब्रह्मचर्यचरणं 'जातद्वयः कुण्डकेऽग्नीनादधीत' इत्यनेन विद्वद्भ्यः । कीतराजकोऽभ्योपास्य इति 'तस्मादग्नीध्रीमीये संस्थिते यजमानस्य दृष्टेऽक्षितव्यम्' इत्यनेन विद्वद्भ्यः । तत्त्वमात्रे कर्तुमसामान्यात् । इत्येवं जने जने । अथाचत्वारिंशद्वर्षाणोऽपि इत्यप्यभिधीते । ... तस्माद्वक्तुं स्मृतिर्विद्वद्वा स्मृतिरप्यमानमिति । अतश्च सर्वेष्टनादि तादृशीण्यम् । शबरः ।

1621. For अथाचत्वारिंशद्वर्षाणि &c. vide बो. प. सु. I. 2. 1-5 अथाचत्वारिंशद्वर्षाणि पौराणं वेदब्रह्मचर्यम् । चतुर्विंशतिं द्वादश वा पविरेदम्... । यद्वर्षान्तं वा जीवितस्यास्थिरत्वात् । कुण्डकेऽग्नीनादधीतेति श्रुतेः । For कीतराजको &c. vide आप. प. सु. I. 6. 18, 16 and 23 'सहस्रमभ्योपयम् । दीक्षितोऽकीतराजकः' । It may be noted that आप. mentions also several other views such as 'अग्नीध्रीमीये संस्थापानेन । हुताग्रां वा यवाग्रां दीक्षितस्य मोक्षयम्' (I. 6. 18, 24-25).

48 years, he would be about 52 to 56 years of age before he married (as the upanayana of a brāhmaṇa was to be performed generally in the 8th year or from the 5th year onwards at the most). Only a married man could consecrate Vedic fires. But a man's hair when he is fifty-two years of age or more can hardly be all dark. Therefore there is contradiction between the rule derived from the Veda and that derived from *smṛti*. In the Jyotiṣoma (which generally occupied five days), the dikṣā (purification and initiation of the sacrificer) takes place on the first day in the afternoon (vide H. of Dh. vol. II pp. 1134-1136). Soma is purchased on the 2nd day of the Jyotiṣoma (*ibid.*, 1140-4) and the animal is sacrificed for Agni and Soma on the 4th day (*ibid.*, pp. 1158-59). According to *śruti*, therefore the food prepared in the house of a dikṣita may be eaten only after the 4th day, while *smṛti* says that it may be eaten after the purchase of soma on the 2nd day. In this way there is contradiction. Kumārila¹⁶²² does not agree with Śabara as regards these examples in particular and as regards the general attitude towards *smṛtis* that are accepted by Vedic followers. He makes great efforts to explain how there is no real conflict in the cases cited by Śabara. As regards the cloth covering the *audumbari* he says that it may cover the bottom and the upper portion of the post and leave a space of two or three finger-breadths in the middle uncovered (so that the *audumbari* post can be touched in that particular portion), that (p. 188) there is a passage in the Śātyāyani

1622. The *sūtra* (Jai. I. 3. 3) is read as अनपेक्षे or अनपेक्ष्य and with both readings it has been explained in different ways from ancient times. The *tanvavārtikā* says 'अतस्मार्तविज्ञानविरोधे यद्वनपेक्षमपेक्षावर्तिने परम वापेक्षणीयमन्यथास्तीति एवं पाठद्वयेपि पूर्वमुवाच्यमानशब्दमनुवृत्तेन सम्भव यद्वनपेक्षे तत्रापत् प्रमाणं स्वादिति' (p. 193); 'श्रुतिविरोधे यस्मान्मन्तरानपेक्षं श्रुतिवाच्यं तद्वै प्रमाणं स्याच्च तु श्रुतिवाच्यं यस्मादुक्तमेव विरोधे स्मृतेः श्रुत्यनुमापकत्वं' मधुसूतनिका. On this interpretation the *sūtra* means 'in case of conflict between *śruti* and *smṛti*, the former which is independent is authoritative, for only when there is no conflict does an inference arise that *smṛti* is based on *śruti*'. The *tanvavārtikā* when it explains Jai. I. 3. 3-4 as referring to Baudhāya and the like takes 'anapekṣya' to mean 'deserving to be discarded'; 'तस्माद्वै प्रति कपीबाह्वमेवजातीयकं यस्मान्पेक्षानपेक्षं स्वादिति सिद्धम्' p. 196. Sāhū in his *śāstra* on *śāstra* II. 1. 1 appears to adopt Kumārila's 2nd interpretation of Jai. I. 3. 3. 'विमलिवर्त्तौ च श्रुतिनामवयवकर्तव्येऽन्तरपरिग्रहेऽन्तरपरिग्रहे च श्रुत्यनुसारिणः स्मृतयः यमनमनपेक्षा इतराः । तदुक्तं यमनलक्षणे विरोधे तत्र...तु मानमिति ।' कुल्लूक on *सूत्र* II. 1. 1 quotes Jai. I. 3. 3 and explains 'श्रुतिविरोधे श्रुतिवाच्यमनपेक्षमनपेक्षमनापेक्षणीयम् । असति विरोधे स्मृत्येवानुमाननिरपेक्षः ।'

Brahmana which refers to the cloth covering the audumbari (and so there may at most be an option), that as regards the taking of food in the house of a *dikṣita* after the purchase of *soma* there is a *śruti* passage in the Atharvaveda (pp. 181 and 189) similar to the *smṛti* passage (and thus there is no conflict between *śruti* and *smṛti*, but between *śruti* and *śruti*, which would lead to an option) and further the *smṛti* rule may apply in the case of a man in distress (*āpād-dharma*), that *smṛti* does not prescribe an absolute period of 48 years for the study of Veda, but Baud. Dh. S. itself allows several alternative or optional periods and so no question of conflict with *śruti* arises. Kumārila's own position is this: In the case of apparent conflicts between *śruti* and *smṛti*, various methods of interpretation and reconciliation are possible. Each of the two may be given its proper scope as referring to different subject matters (which is called *viśaya-vyavasthā*); it is also possible to hold that *smṛti* is based on some *śruti* texts already existing but not found at the time of discussion, but which may ultimately be found, in which case there will be an option, though the latter is to be avoided as far as possible as it is liable to eight faults (vide *Tantravārtika* pp. 174-175); or the two may be reconciled even when referring to the same subject matter e. g. a man may have dark hair even when he is 52 or more and the *smṛti* may be taken as meant to refer to such a man, while the *śruti* states the general rule about the age when consecration of Vedic fires was to be made. Therefore Kumārila holds that all that is meant by Jaimini and even by Śābara is that there is a great distinction between *śruti* and *smṛti* in that the former is *apauruṣeya* and an independent authority, while the latter has a human author (liable to err), is either actually based on the Veda or is inferred to be so based, that the two therefore can never be said to be quite alike each other as regards their authoritativeness and that lastly *smṛti* is not in itself to be regarded as unauthoritative¹⁶²³. Kumārila therefore suggests that the proper subject of discussion in Jai. I. 3. 3-4 is the works of Bauddhas, Sāṅkhya, Yoga, Pāñcarātra, Pāsupata and other heretical sects and the practices of *mlecchas*. These works contain some matters such as the emphasis on *ahimsā*, truthfulness, restraint of senses, charity and compassion, which are also emphasized in the Veda, but these works are not

1623. अतश्चैवं बुद्धिस्तुष्टयोर्विद्वेषोनेन दृश्यते । नाप्यन्येन वाच्यत्वं न वाच्यवदन्त-
दुष्टयसा । तन्त्रवार्तिक p. 194.

generally accepted by the followers of the Veda, are based on specious and false reasoning only (they are *hauṭukas* in the words of Manu), that they deny the authority of the Veda. Therefore Jaimini means that these works of heretic sects are not authoritative in matters of dharma as they are opposed to the Veda and should be discarded. For want of space it is not possible to set out in detail the interesting discussion in the *Tantravārtika*. The *Jaiminiya-nyāya-māṣvīṣṭara* also gives another explanation of Jai. I. 3. 3.

Śabara (on Jai. I. 3. 4) explains that the three *smṛti* passages stated above are not authoritative since it is possible to point out how they originated in a visible worldly motive such as greed. When a visible motive can be pointed out for any *smṛti* text, it is not proper to infer that it is based on the Veda and has an unseen spiritual motive. Śabara¹⁶²⁴ postulates the reasons in the way of a modern man finding fault with priests. Some priests covered the whole of the Audumbari post with cloth, because they coveted the cloth as part of the fee; others who desired a free meal when hungry took food at the house of a *dīkṣita* even after he had purchased the Soma plant; certain others in order to conceal their absence of virility went in for Veda study for 48 years. The *Tantravārtika* tries to show that in all these cases there is really no visible motive such as covetousness (pp. 188-189).

Śabara gives an alternative explanation of this *sūtra* (Jai. I. 3.4) and makes a separate topic (*adhikaraṇa*) of it. The reasons¹⁶²⁵ for giving an alternative explanation of a *sūtra* or *adhikaraṇa* are two, viz. dissatisfaction with the explanation already given or the wide scope of the subject under discussion. In I. 3. 3 passages from *smṛtis* were cited which were apparently in conflict with *śruti*. If they were really in conflict, that one reason alone is more than sufficient to render the *smṛtis* invalid. Therefore to say further that those *smṛti* passages originate in worldly motives like greed does not add any very substantial reason for the abandonment of *smṛtis* as authoritative. Therefore Śabara makes another *adhikaraṇa* of *sūtra* 4 of Jai. I. 3.

1624. हेतुसूक्ष्माच्च । जे. I. 3. 4: लोभाद्वास आदित्समाना औदुम्बरीं कृतान् वेष्टितवन्तः केचित् । तत्सूक्ष्मेतिजम् । कुमुदमायाः केचित् कोटराजकरं भोजनमाचरितवन्तः । अयुस्त्वं मन्त्रादयस्तथावाच्यत्वादिभिरुपाणि वेदमन्त्रार्चं चरितवन्तः । तत एवा स्मृति-कृतमपेक्षे । इति च ।

1625. सर्वपापविनाशायाम् इत्यनेन योजनम् । पूर्वपापविनाशो वा विषयपापविनाशो वा । तन्त्रवार्तिक p. 186.

He cites *smṛti* passages which are not opposed to *Veda* at all and says that such passages have seen a worldly motive such as covetousness and it is not proper to suppose that they are based on *Veda* and are therefore authoritative, when a visible purpose or motive can be ascribed to them. The result of the explanations of I. 3. 3-4 given by Sabara would be that *smṛti* rules that are opposed to *śruti* rules and *smṛti* prescriptions that can be shown to have a clear worldly motive are not authoritative or absolutely binding, while the rest of *smṛti* texts are authoritative.¹⁶²⁶

Sabara cites on Jai. 1. 3. 4 (when taken as a separate topic)^{1626a} two examples; (1) the *adhvaryu* priest takes (as his fee) the cloth used in the *Vaisarjana homa*; (2) they perform the gift of the elephant (i. e. the cloth covering) of the sacrificial post. Sabara says that these passages are not opposed to any *śruti* text but instead of inferring a Vedic text as their basis it is far better to hold that there is a manifest worldly motive for these rules (viz. covetousness of the *adhvaryu*) and so these *smṛti* passages need not be looked upon as authoritative.¹⁶²⁷

This discussion raises an important doctrine which frequently figures in *dharmasāstra* works. The doctrine is expressed

1626. न हटे देतौ देवमतराहुमानं कर्मते । हृष्टश्चात्र सोम एव हेतुरिति । ... अथ, क्षुत्तिविचर्यै हृष्टकारणं च स्मरणमवमानं ततोऽव्यापमानमिति । शास्त्रदीपिका ०० जे. 1. 3. 4.

1626a. अधिकरणान्तरं वा । वैसर्ज्यमग्नीषोमीयं वासोऽव्यवृत्तं इति, यूपहस्तिनो दानमाचरन्ति इति । तत्तद्वृत्तान्पात्यमानमिति वाते । अवमानं स्मृतिः । अत्रान्यम्बुलम् । सोमावाचस्तिपन्नाः केचित्तत्र एवा स्मृतिः । उपपन्नतरं चैतत् वैदिकवचनकल्पनात् । अथ ०० जे. 1. 3. 4. यथाकारे in his *puṣṭi* refers to this example (on Jai. 1. 1. 15 p. 285) 'हृष्टश्चावमर्षो वाचाज्ञः अजय उपजोष्यता इति । यथा च सिद्धमागमवादिनामपि हेतुदर्शनादवमानं यूपहस्तिनो दानमाचरन्तीति चेत्तदादिषु'.

1627. For the *Vaisarjana homa*, vide H. of Dh. II. p. 1155. In this a piece of fresh cloth is spread over the sacrificer (who touches the *adhvaryu*), the sacrificer's wife (who touches the *yajamāna*), the brother and sons of the sacrificer (who touch the wife). In the *Vijapeya*, the sacrificial post was 17 *aratnis* in height and 17 pieces of cloth were employed to prepare the appearance of a turban on the tip when enveloping the *yūpa* with a girdle. The figure presented by the cloth covering the *yūpa* was called *yūpahastin* (probably because it looked like the head and trunk of an elephant). 'नाजपेयादौ यूपपरिध्याजज्ञादौ यूपहस्तिरुद्धार्यः' मयूखमाहिका. 'यूपवेष्टनं सप्तदशभिर्लक्षैर्पुष्पधनं वा परिधयनकाले' शांखा. आ. 14. 1. 20 and the com. on Kā. Sr. says 'सप्तदशपरिधयनकाले सप्तदशभिर्लक्षैर्पुष्पधनं वेष्टनं कर्तव्यम् । अथवा पुष्पधनं विविधमूर्तं सधनं कर्तव्यं न तु वेष्टनमात्रम्'.

in this form viz. when a visible motive or purpose is obvious in the case of a rule or prescription it is not proper to ascribe an unseen or spiritual purpose or reason for it. This doctrine is older than even Āp. Dh. S. I. 4. 12. 11 which says, 'where men act because they find pleasure in so doing, there śāstra has no scope'. Śābara also says,¹⁶²⁸ 'those rules (in the smṛti) that have a seen purpose derive their authority from that fact, while those that have no visible purpose may be inferred to be based upon the Veda (and derive their authority from that)'. These words of Śābara are quoted by Kullūka on Manu III. 7 where Manu states that a girl should not be selected as a bride from a family that neglects the *śaṅskāras*, in which no male children are born, in which there is no Veda study, the members of which have on their bodies long and thick hair, that suffers from such diseases as piles, dyspepsia, epilepsy, black and white leprosy. Kullūka remarks that the works on medicine hold that such diseases are inherited and so if such a girl be married the progeny might suffer from these diseases, and thus this prohibition is based on a visible motive. From this a very important conclusion is drawn by dharmaśāstra writers viz. if one while performing a rite or when engaged in any matter acts contrary to a rule that has a seen purpose, the rite or matter does not become invalid or void, while where a rule is based on an unseen or spiritual purpose and it is infringed, the act itself becomes void or invalid. Yaj. I. 52 and 53¹⁶²⁹ prescribe among other things that the bride to be chosen by a man must be free from (incurable) diseases, must have a brother living, must not be a *sapinda* of the bridegroom or must not have the same *gotra* or *prajñā* as that of the bridegroom. On this the Mīl. remarks that if a man marries a girl who is suffering from an incurable disease, the marriage is valid, only he does an act which runs counter to seen results (i.e. he may suffer the consequence that

1628. तथा अस्त्युपस्थितनिषमानामाचारानां दृष्टार्थत्वादेव सामान्यम् । ... तेन ये दृष्टार्थास्ते तत्र एव प्रमाणम् । ये त्वदृष्टार्थस्तेषु वैदिकद्वन्द्वानुमानमिति । शबर on जै. 1. 3. 2. quoted by कुल्लूक on मनु III. 7; अदृष्टं हि तत्र कल्पनीयं-स्यात् तत्त्वज्ञानं ह्येव सम्भवति । शबर on जै. IX. 3. 3; तत्र दृष्टं परोक्षमनुसृत्य न अल्पमदृष्टं कल्पयितुम् । शबर on जै. X. 3. 23. The स्वायसुधा on जै. 1. 3. 4 p. 158 says, 'इदं संभत्यदृष्टकल्पनमनुकमिति व्यापकम्' ; यद्य तु यस्त्युपस्थितः पशुभिर्न तत्र शान्तिमिति । अथ. प्र. सू. I. 4. 12. 11.

1629. अविप्लवमात्राचर्यो लक्षणो ज्ञिगमुदहेत् । अल्पमपूर्विका कान्तामस्तपिष्ठा यवीयसीम् । अरोणिणीं प्रातुमतीमसनामार्थेनोदयाम् * या. I. 52-53 ; सपिण्दासमान-मोधासमानपरासु भार्यात्वमेव नोत्पद्यते ; रोणिणादिषु तु भार्यात्वे उत्पद्येति दृष्टतिरोह एव । मिताक्षरा.

his children may be diseased), but if he goes through a ceremony of marriage with a girl who is a sapinda or of the same gotra or pravara there is no valid marriage and the girl is not his legal wife. No clear visible purpose can be associated with the prohibition against marrying a sapinda or sagotra girl; hence there must be a spiritual purpose in that prohibition and so if one infringes it the act itself (*viz.* marriage) becomes void.¹⁶³⁰

The *Tantravārtika* of Kumārila has as usual a very long note on this discussion. He does not see eye to eye with Śābara. He says¹⁶³¹ that the *Mīmāṃsā* is concerned with the investigation of dharma, that *śruti* is the prime authority in matters of dharma, that *Mīmāṃsā* has concern with *smṛtis* only so far as their authoritativeness in matters of dharma goes, that just as agriculture and the like are not discussed in *Mīmāṃsā* works because they have a purely secular purpose, so all acts that men do for a visible worldly purpose have no bearing on the investigation of dharma and that therefore the *bhāṣyakāra* (Śābara) was not quite right in saying that such practices as rising to receive an old man or a teacher have a visible purpose and are authoritative on that ground. He further remarks that visible and invisible or spiritual purposes are often inextricably mixed up. When the *Veda* prescribes 'he pounds the grains of paddy' or enjoins a sacrifice like the *Kārīrī* for bringing down rain, there is a visible purpose therein (e.g. the rice grains have to be freed from husk before boiled rice for oblations can be prepared). So even when an act has a seen purpose it may still have *Veda* as the basis; so also an act such as rising to show respect to a teacher may have a seen result (such as the teacher being pleased teaches the pupils with enthusiasm) as well as an unseen result (*viz.* completion of *Veda* study without obstacles). Therefore he argues that all

1630. In a very recent case (*Madhavrao v. Raghavendrarao* 48 Bom. L. R. 196) the Bombay High Court has expressed doubts about the logic or reasonableness of this doctrine of the *Pūrvamīmāṃsā* in relation to marriages of sagotra parties.

1631. इदार्थलादेव मानाश्रयमिति । एतद्वक्तव्यम् । धर्मं प्रति यतोऽपेक्षे मानाश्रयं यस्तुल्यं सृष्टेः । तस्मात्कृपादिप्रत्येकप्रमाण्यमात्रं न तुल्यते ॥ न हि शान्तिकजिह्वाचरणं तस्य सर्वस्य मूलमिह मानार्थमिति । धर्मविज्ञानाधिकारात् । यदि च सर्वस्य मानादीनां केवले इदार्थत्वमेव स्थाप्यते कृपादिवत्तुल्यं मानमानाश्रयमेवेति नोपपत्तिरुच्यते । ... न चावधानादीनां बुद्धिकाम-
यमादीनां च इदार्थानामपेक्षितत्वम् । तन्त्रवार्तिक pp. 165-166.

*smṛtis*¹⁶³² are authoritative according to the purpose they serve, that whatever portion of the *smṛtis* is concerned with *dharma* and *mokṣa* (final release from *samsāra*) has its origin in the Veda and whatever is concerned with wealth and the satisfaction of desires (*artha* and *kāma*) is based on worldly practices. In this way are to be explained the didactic portions of the *Mahābhārata* and the *Purāṇas*, the episodes in these being useful as *arthavādas* (eulogies of what are prescribed as religious duties), the description of the several divisions of the earth being useful for indicating what countries are suitable for the performance of *dharma* and the enjoyment of its rewards and being based partly on Veda and partly on direct experience. Similarly the auxiliary lores (*āṅgas*) of the Veda (such as phonetics, grammar, metrics &c.) are partly based on the Veda and partly on worldly experience. *Mīmāṃsā* and *Nyāya* (logic) are necessary for the correct interpretation and understanding of the Veda (as stated by *Manu* in XII 105-106). He is even prepared to concede that systems¹⁶³³ like the *Sāṅkhya* (which postulates a prime cause of the world called *Pradhāna*) or *Vedānta* (which postulates *Puruṣa* as the cause of the world), the theory of atoms (propounded by *Kaṇāda*) serve the purpose of explaining the creation and dissolution of the world, lead one to understand how the performance of sacrifices gives rise to the subtle *apūras* which leads on to heaven and also exemplify how human effort and fate have their own spheres of operation (i. e. without human effort the world is produced and in spite of human effort it may be dissolved). *Kumārila* goes a step further and states that even the Buddhist philosophies of *ajñāna* (cognitions being the only reality), of the non-existence of the soul or of eternal flux arise from the *arthavāda*

1632. तेन सर्वस्मृतीनां प्रयोजनवती यामागमसिद्धिः । तत्र यावज्जर्ममोक्षसम्बन्धिं तदेवधर्मवत् । यन्पर्यनुक्तविषयं ततोऽप्यवहारपूर्वकमिति विवेकवत् । एषेतिहासपुराणधोरुत्पुपर्वशास्त्राणां सति । उपासधानानि स्वधर्मादेषु व्याख्याताति । ... सीमासा तु दोषादेव यत्पञ्चाङ्गनामादिभिरावेष्टिकसंभवापन्धिकव्यवहारैः प्रवृत्ता । न हि कश्चिदपि यथमेतान्तेन बुद्धिकतापमुपसर्हन् शक्यः । एतेन व्याख्यितारं व्याख्ययति । तन्त्रचार्तिक pp. 166-167.

1633. धर्मज्ञाः प्रधानपुरुषेश्वरपरमात्मकारणाद्विभक्तिः । स्मृतेर्यत्तद्विषयेन यतीतिहासः सर्वो मन्त्रार्थवाङ्मनादिव द्रव्यमानधर्मरूपलक्षणकृतविकारभावदर्शनेन च दृश्यः । प्रयोजने च सर्वस्यामाद्यताद्योवाङ्मनाद्विभागज्ञानम् । सर्वमलसोपवर्णनमपि द्वैतपुरुषकारधर्मावपविभागदर्शनायम् । ... विज्ञानमात्रक्षणमनुमेराख्यादिवादानामनुपनिषदर्थवाङ्मनवत्त्वं विषयेष्वापत्तिकं रागे निवर्तयितुमिच्छुपपन्नं सर्वेषां यामागमम् । सर्वत्र च तत्र काटाक्षरकलावादिदानीन्तनमवाप्तसम्भवाच्च अविमुक्तता । सान्द्राधिककले तु शुभिकविद्यादौ पुरुषान्तरे व्यवहारदर्शनादेव यामागममिति विवेकसिद्धिः । तन्त्रचार्तिक p. 168.

passages of the Upanisads and serve the purpose of inducing men to give up extreme attachment to sensual pleasures and therefore may be useful in their own way. He winds up by saying that in the case of all knowledge or works wherever the result (or reward) of the course laid down in them is to take place in the future and there is no possibility of experiencing its happening in the present such work may be deemed to be based on the Veda; but where, as in the science of medicine, the result can be seen taking place in other people, that knowledge is authoritative only because of the visible result.

This discussion about *smṛti*s based on the Veda or on perceptible purposes or motives is taken up in the digests on *dharmaśāstra*. For example, *Aparārka*¹⁶³⁴ (pp. 626-627) quotes long passages from the *Bhaviṣyapurāṇa* dividing the contents of *smṛti*s into five categories and exemplifying that division, viz. (1) those based on a visible purpose or motive, (2) those based on unseen or spiritual motives or purposes, (3) those based on both visible purposes and unseen or spiritual purposes, (4) those based on reasoning, (5) those that merely re-iterate what is already well-known or determined. All these except the first variety are based according to the *Bhaviṣyapurāṇa* on the Veda. The examples of the five kinds given by the same *Purāṇa* are respectively as follows: (1) the *smṛti* (viz. *Arthaśāstra* or *Dandanīti*) in which there is a discussion about six *guṇas* (*sandhi* &c.), the four *upāyas* (*sāma*, *dāna* &c.), the various superintendents of state departments (*adhyakṣa*) and of *kantakas*; (2) the prescription that one should perform the *sandhyā* worship or that one should not partake of dog's flesh; (3) a *brahmacārin*

1634. तथा च भविष्यपुराणम् । इदार्था च स्मृतिः काचिद्दृष्टार्था तथा परा । दृष्टादृष्टार्थस्याप्यत्र न्यायमूला तथापरा । अनुवादस्मृतिस्तत्तया निर्दिष्टा तु पञ्चमी । सर्वा पता वेदमूला इदार्था (योः) परिहृत्य तु ॥ बाह्यमुपस्य पद्याणाम् द्रव्योपात्तार्थोपात्तः । (यथाय- कार्य-!) । सामादीनामुपायानां यमो व्याससमाप्तः ॥ अथपद्यानां च निशेषः कण्टकानां निरूपणम् । इदार्थं स्मृतिः योक्ता अविभिन्नदृष्टार्थः ॥ सम्प्रयोगातिः सदा कार्यं क्षुणो मर्मं न भक्षयेत् । अदृष्टार्था स्मृतिः योक्ता अविभिन्ननिर्णयोपिदुः । पाताश धारयेद्दण्ड-मुनयार्थं विपुञ्जः । निरोधे तु विकल्पः स्वात्मपक्षेऽप्युक्तो यथा ॥ क्षुणो दष्टे यथा कार्यं स्मृतौ न सङ्गं यदि । अनुवादोऽपि सा तु पारिजातं यथा दृष्टात् ॥ अपरार्क pp. 626-627, निवमिश्र in his comment on ya. I. 3 quotes the first two verses and in his परिभाषायांकाश p. 19 quotes all. कुल्लुक on मनु III. 7 quotes from the भविष्य- the half verse 'सर्वा ... इदार्था परिहृत्य तु'. The स्मृतिच. II. p. 24 quotes from चरित्र- the two verses बाह्यमुपस्य ... वरहाशन and remarks 'इदार्था स्मृतेऽनुवादोऽप्युक्तः । एवं च सन्धिपिदृष्टादि दृष्टार्थविषया स्मृतिरर्थसात्मनिरप्यर्थः ।', should we not read 'स्मृतौ च सङ्गः' ?

should carry a staff of *palāśa* (the staff serves for one's protection, which is a seen purpose, but that it should be of *palāśa* and of no other tree is based on an unseen motive); (4) when one text declares that *homa* should be performed after sunrise and another declares that it should be performed before sunrise, reasoning requires that there should be an option (vide Manu II. 15); (5) when Manu declares (in VI. 38) that a *brāhmaṇa* should leave home to become a wandering ascetic he simply re-iterates what is laid down in such Vedic passages as Br. Up. III. 5. 1 (*vyntthāyatha bhikṣācāryam caranti*) or Jābala Up. 4.

In I. 3. 5-7 Jaimini as interpreted by Śabara¹⁶³³ deals with the topic of the authoritativeness of certain usages laid down in the *smṛti* in relation to Vedic rites. Śabara states: *śiṣṭa*⁸ say that religious rites should be performed after sipping water (i. e. after *ācamana*), one should wear the sacred thread in the *upavīta* way in the worship of gods, one should do with the right hand all religious acts. The question is whether these acts should be done if not opposed to the *śruti* or should not be performed if opposed to what is taught in the Veda. The *pūrvapakṣa* view is that these acts should not be done because they run counter to the sequence of the acts laid down in the Veda. For example, the Veda says, 'after getting ready a bundle (or handful) of *kuśa* grass called *veda* one should prepare the *vedi*' (altar). Here the preparation of the *vedi* is declared to follow immediately after the getting ready of a handful of *kuśa*. If after the handful is got ready a man has a sneeze he has according to Manu V. 145 and Vas. III. 38 to sip water before going on with the preparation of the *vedi*. This would be against the sequence (*krama*) of acts laid down in the Veda. Strangely enough Mr. K. L. Sarkar in T. L. L. (on *Mīmāṃsā* rules) translates the words '*yedam krivā vedim karoti*' as 'make the *vedi* and

1633. शिष्टोपेक्षविज्ञमिति चेत् । न शास्त्रपरिमाणत्वात् । अपि वा कारणान्नान्ये षड्पुक्तानि यतीवेरन् । जै. I. 3. 5-7; आचमनं कर्तव्यं यज्ञोपवीतना कर्तव्यं दक्षिणाचरेण कर्तव्यमित्येवंदृष्ट्याणि उदाहरणानि । किमेतानि सुतिविज्ञानानि न कर्तव्यानि एताविद्वद्भ्यामि कार्याणि चेत्परमसि तेरप्युपवीतनादीनां किञ्चित् कुप्यति तस्मात्प्रतिज्ञातीति । केतदेवम् । शास्त्रपरिमाणं हि कामं यतीवेरन् । कथम् वेदं कृत्वा वेदिं कुर्वीतेतीत्येव सुतिप्रवक्तव्यादन्तरा वेदं वेदिं चातुर्विधमात्रमाचमनादि । सपरः । तेष्वद्विनाद्विरोधपर्येति वा समाप्तिः । ... अपि वा कारण इष्टं एतान्देव न युज्यते । तस्मान्नाचमनादीनां कर्तव्यमिति विज्ञात्वा ॥ तन्त्र. p. 198. कुमारिल says that the 7th śūtra should end with the words 'तेष्वद्विनाद्विरोधपर्येति', which may also be taken as part of the 8th śūtra and relies on the maxim of the crow's eye. The words षड्पुक्तानि यतीवेरन् mean 'शिष्टेष्वुपवीतनाचमनादीनामिदेष्वेव'.

then recite the vedas' (p. 241), thereby committing two mistakes. He misunderstands the word 'veda' which in this passage only means a 'handful of kusa' and inverts the sequence of the acts denoted by the gerundial termination 'tva'. On account of these two mistakes the discussion on pp. 240-242 is misleading and obscure. If a man were to do the things required in a vedic rite with both hands, he would be able to do them quickly. The śruti rule that every religious act should be done with the right hand alone interferes with the quick performance of religious acts. The established conclusion is that these religious acts (such as ācamana) are performed by the śiṣtas, are prompted by no visible motive (such as covetousness) and are therefore to be looked upon as authoritative, being not opposed to śruti. Kumārila does not like this way of explaining the sūtras, since the instances given by Śābara really do not deserve to be put forth as even *prima facie* opposed to Śruti. The Tantravārtika (p. 201) sets out śruti passages wherein the wearing of the sacred thread in the *upavīta* form¹⁶³⁶ (Tai. S. II. 5. 11. 1 and Tai. Ār. II. 1), ācamana (Tai. Ā. II. 11), are enjoined. Therefore it explains the sūtras in a different way. It splits up Jai I. 3. 5-7 into two adhikaranas. The first two constitute one topic. The *pūrvapakṣa*¹⁶³⁷ is: those precepts of Buddha and other founders of sects, such as the construction of monasteries and parks, the insistence on desirelessness, the practice of meditation, *śhīlā*, truthfulness, restraint of senses, charity and kindness, are such that they are also laid down by the Veda, are not opposed to the ideas of śiṣtas or do not run counter to nor rouse those who know the Veda to anger and therefore they must be held to be authoritative. This is denied by saying that the Bauddha doctrines even on the abovesaid matters are not to

1636. Vide H. of Dh. vol. II. pp. 287, 288, notes 671, 677 for the passages of Tai. S. and Tai. Ā.

1637. धर्मानि तु पूर्वोपिहरणादपेक्षितान्स्वयमेव व्याख्यातव्यानि । यस्मिं वेद-
निमित्तं न बाधे शिष्टान् वा वेदविदो न कोपयति विद्यायाश्चमन्वत्करणवैराग्य-ध्याना-
न्यासादिना-सत्परचन-दम-दान-दवादि तद्वृद्धादिनापि प्रमाणनापिक्रममिति चेत् ।
न । शास्त्रपरिमाणत्वात् । परिमितान्येष हि चतुर्दशाष्टदश वा विद्यान्यासानि धर्मप्रमाण-
त्वेन सिद्धे परिपूर्णीतानि वेदोपवेदाङ्गोपाङ्गाद्यादुपमसहितान्पुराणशास्त्रादिनादुद्धर्तु-
मशक्यानि, न च तेषां मन्वे भौजार्जवादिग्रन्थाः स्मृता पूर्वाणा वा । ... तेन ... सम्बुद्धमप-
हिसादि अद्वैतनिमित्तवतीरवदुक्तपदोपविभ्रमणीये च तन्मात्रोपलब्धे भवतीत्यवश्यं बाधपरि-
मणित्वमशक्येवो मोपलभ्यते तावद्व्याप्तं भवति । तत्रः pp. 201-203; vide n.
1620 above.

be accepted as authoritative since only a limited¹⁶³⁸ number (14 or 18) of vidyās (the four vedas, the upavedas, the āngas of the veda, the 18 smṛtis, purāṇas, Dandānīti) have been accepted by the vedic śiṣṭas as authoritative on matters of dharma and the works of the Bauddhas and Jainas are not included therein. Just as milk though originally pure becomes useless and unreliable when put into a bag of dog-skin, so the doctrines of Bauddhas such as ahimsā, though based on truth, are useless and are not authoritative in themselves for the followers of the Veda.

The Tantravārtika holds that Jai. I. 3. 7 is an adhikaraṇa by itself and is concerned with the authoritativeness of sadācāra (the customs and usages of śiṣṭas). Its position is that those usages are authoritative that are not opposed to express Vedic texts, that are practised by Vedic śiṣṭas under the belief that they are right conduct (dharma) and for which no visible motive (such as pleasure or the satisfaction of desires or the acquisition of wealth) can be predicated. Śiṣṭas are those who perform the religious acts expressly enjoined by the Veda. They are not so called because they practise what is said to be sadācāra; otherwise there will be an argument in a circle (in the form 'sadācāra means what is practised by śiṣṭas and śiṣṭas are those who practise sadācāra'). The practices traditionally handed down from generation to generation which are observed by śiṣṭas (as stated above) with the idea that they constitute a part of dharma must be regarded as dharma and as leading to heaven.¹⁶³⁹ Practices do not become authoritative by the mere fact that no such motive or purpose can be postulated for them, but they become so only when they are observed by śiṣṭas as

1638. Vide Yaj. I. 3 for the 14 Vidyāsthānas. For the four upavedas which raise the number to 18 vide n. 17 p. 10 above. Acc. to the Nyāyasūdhā (p. 183) Āyurveda, Dhanurveda, Gāndharvaveda and Arthashastra are four Upavedas; Mīmāṃsā and Nyāya (logic) are two upāṅgas, Śāstra (not the Vedāṅga on phonetics) is separately mentioned because there are works on phonetics like that of Kātyāyana laying down special rules for distinct śākhās, Dandānīti is the same as Arthashastra.

1639. इष्टकारणहीनानि चानि कर्माणि साधुभिः । प्रयुक्तानि प्रतीयेन् धर्मसंगेहं
तान्यपि ॥ शरीरस्थितये चानि सुखाय वा प्रयुजते । अथार्थं वा न तेष्वस्ति शिक्षामात्रेण धर्मधीः ॥
धर्ममेव प्रयुजानि क्षिप्तानि तु कानिचिद् । वैदिकैः कर्तुमान्यासेषां धर्मत्वमिष्यते ॥ ...
नेह तेषां सदाचारनिमित्ता शिक्षता मता । साक्षाद्विहितकारिणाञ्चिदप्ये सति तद्वचः ॥
प्राप्तवद्भूतिहेतुधर्मकिंपा हि त्वयश्चिद्वचस्यपदेना यत्परम्पराप्राप्तमन्यदापि धर्मकुलत्वा
कुर्वन्ति तदपि स्वर्गसाधनमपमेव । तन्वचार्थिक pp. 303-6.

part of dharma. The *Tantravārtika* (p. 205) gives certain illustrations of such practices viz gifts, *japa*, *mātrajāñā* (offerings to the mother Goddesses), the festival of Indra's banner, fairs held at temples, fasts by maidens on the 4th day of a month, gifts of lamps on the first day of Kārtika, the spring¹⁶⁴⁰ festival on the first day of the dark half of Phālguna &c. The *Tantravārtika* is careful to point out that many activities such as agriculture, menial service or trade that are the means of securing wealth and pleasures and that give rise to several fixed and varying acts and also such actions as eating sumptuous food, drinking, sleeping on soft beds, possessing a charming house and garden, engaging in painting, singing and dancing, enjoying the fragrance of sandalwood and flowers, all of which are common to *mlecchas* and *Āryas*, are not deemed by any one to be part of dharma and that it does not follow that, because a few actions (of *śiṣṭas*) are accepted as dharma, all their actions are to be looked upon as dharma.¹⁶⁴¹ In ordinary life certain practices only are deemed to be *śiṣṭācāra*, while there are certain other acts that are common to all human beings (including *śiṣṭas*), but are not so regarded. Certain practices such as worship of gods and honouring brāhmanas are seen to be common among all people and yet do constitute dharma, because that is deemed to be so by the *śiṣṭas*. Those practices alone are dharma that are observed by *śiṣṭas* only as obligatory on them and not other practices that are common to all beings. The *Tantravārtika* then refers to the Dharma-

1640. For the festival called *Indramaha*, vide H. of Dh. vol. II. pp. 825-826. The spring festival was one in which on the first day of the dark half of Phālguna people went about drenching each other in ordinary or coloured water discharged from syringes and the like : 'कालसुप्तकुम्भरतिपदि क्रियमाणः परस्परजलमेकः वसन्तोत्सवः' मनुस्मृतिका on शास्त्रदीपिका on च. 1. 3. 7. Modern practice combines this with the lighting of bonfires on the Full moon of Phālguna. The mythical origin of होलिका of modern days on the Full moon day of Phālguna is described in भविष्यपुराण (उत्तरपर्व chap. 132).

1641. नानि तु श्लेष्मादिसमाधानि निवृत्तानि पञ्चक्रियाभारतपर्यंतुल्यसाधनद्वयमिवा-
नामिषादीनि मृदाकषायसुशुष्यनातनराम्भीषणोद्यानादेशपरीतदुष्टपगन्धदुष्पादिकर्माणि
समिद्धानि तेषु नैव कल्पचिह्नमेषां शङ्कास्तीति न तत्सामान्यतो दृष्टेनैवरात्रिक्रियोपपत्तिः
स्वेषाविद्या धर्मस्याभ्युपगमाच्च सर्वेषामेव सत्यसङ्गः । किं तु-देवमाह्वयजूजावि पक्षेभामपि
किञ्चन । तत्रैवमेव धर्मस्य सिद्धाचारमनं हि तत् । लोके हि कश्चिदाचारः शिष्टत्वेन विशिष्यते ।
कश्चित्तु पाणिसामान्यमास्तेरापि सङ्गतः । अथ यः कार्यकारणं सिद्धान्तानुवर्तते । स एव
केवलतो धर्मो नेतरः अस्मिन्मात्रतः । अथ p. 206 ; ये हि संवाच्यः सुप्रबुद्धा मित्रे स
धर्मो दर्शनं प्रतिपद्यते । परंतु कामकोपलोभमोहशोकादिहेतुलेनोपलभ्यते स पञ्चाविधिपति-
वैधं प्रतिपद्यते । अथवातिष्ठ p. 208.

sūtra¹⁶⁴² of Gaut. (I. 3) and Āp. Dh. S. (II. 6, 13, 7-8) which say that ancient (or great) men in several instances were guilty of transgressions of dharma and of committing desperate acts, that on account of their spiritual merit they did not incur sin, but if a man of later days were to follow them in the same acts he would sink into hell. It then gives twelve instances of lapses from good conduct (attributed even to *anūṭars*) that were transgressions and either explains them away or says that they were due to wrath, hatred or other passions, were not intended by the authors (of those acts) themselves to be dharma and are not to be looked upon as *śiṣṭācāra* by modern men. The instances are: (1) Prajāpati who is said to have approached Usas, his daughter (Śat. Br. I. 7. 4. 1 or Alt. Br. 13. 9); (2) Indra, who is described as the paramour of Ahalyā (in the Subrahmaṇyā litany); (3) Nahuṣa, who occupied the position of Indra, made approaches to Śacī, the wife of Indra (Udyoga, chap. 13 ff) and was transformed into an *ajagani* (Boa Constrictor); (4) Vasiṣṭha, who when his 100 sons were devoured by a demon, was so struck with grief that he threw himself bound into the Vipāśā river (Nirukta IX. 26, Ādiparva chap. 177. 1-5 = cr. ed. 167. 1-5, Vanaparva 130. 8-9, Anuśāsana 3. 12-13); (5) Purūravas who thought of dying by hanging or by being devoured by wolves (Rg. X. 95. 14, Śat. Br. XL. 5. 1-8) when separated from Urvāśī; (6) Viśvāmitra, who officiated as priest at the sacrifice of Trisanku that had become a *cāṇḍāla* through a curse (Ādiparva 71. 31-33); (7) Yudhisṭhira who took Draupadī as wife although she had been won by his younger brother Arjuna by his skill in archery and who prevaricated in order to bring about the death of his brāhmaṇa teacher Droṇa (Dronaparva 190. 55); (8) Kṛṣṇa Dvaipāyana (Vyāsa), who thought himself a perpetual student, procreated by *niyoga* at the request of his mother Satyawatī two sons on the widows of his brother Vicitravīrya; (9) Bhīṣma who lived on without belonging to any (of the four) āśramas and who is said to have performed several Āśvamedhas though he had no wife; (10)

1642. इतो धर्मविराजः साहसं च महताम् । अवर्तुर्विषयात् । मी. 1. 3-4; इतो ... साहसं च दूरेषाम् । तेषां तेजोविद्वेदेन व्यवहारो न विद्यते । तद्वर्तित्य यजुज्जामः सीद-
 च्चनः । आय. घ. सू. II. 6. 13. 7-9; भागवतपुराण X. (दूर्वाध 33, 30) has a verse to the same effect.

Rāma who performed Aśvamedha accompanied by a golden image of Sītā; (11) Dhṛtarāṣṭra, though blind, performed sacrifices; (12) Vāsudeva and Arjuna are described as being drunk and as having married Rukmīṇī and Subhadrā respectively who were their maternal uncle's daughters (such marriages being forbidden). Kumārila, like a modern comparative mythologist, explains (*Tantravārtika* p. 208) that Prajāpati means 'the Sun' who approaches (i. e. rises after) the Dawn. This explanation is as old as the Ait. Br. 13. 9 where it is said that there are two views viz. it is either 'Heaven' or 'Uṣas' that is meant by the word 'daughter.' Similarly Indra and Ahalyā respectively mean the Sun and the Night and *jāra* means literally 'one who makes to disappear or wither away' (and not paramour) in that passage. Vide H. of Dh. vol. II. p. 1145' note 2550 for the epithet 'Ahalyāyai jāra' in the Veda and quotation from *Tantravārtika*. The story of Ahalyā and Indra varies in its details in the epics. Vide Rāmāyaṇa I. 48, Udyoga 12. 6. These two are instances of transgression of dharma (dharma-vyatikrama) and the next case of Vasiṣṭha is an example of *sāhṣa* (through sorrow). Kumārila says that Viśvāmitra was prompted by his hatred of Vasiṣṭha and his pride, that the sin accruing from his act would be neutralized by his great austerities. So his actions cannot serve as a model for imitation by others. Vyāsa, who was a son of Satyawatī from Parāśara when she was a maiden, had Vicitravīrya as (his uterine) brother after Satyawatī married Santanu. In the case of a brahmacārīn, sexual intercourse is most reprehensible (vide H. of Dh. vol. II. p. 374)^r But Vyāsa agreed to *niyoga* because of his regard for his mother, as allowed by Gaut. 18. 4-5. Kumārila adds that Vyāsa could do so on account of his great past and future austerities, that another person with similar qualifications may do so even in spite of all prohibitions, since the Mahābhārata (*Āśramavāśika* 30. 24) says 'sarvaṃ balavatām pathyam' (to the strong everything is wholesome or allowable). He gives an apt illustration. An elephant can devour branches of trees without harm, but others doing so would meet death. Dakṣa V.10 prescribes 'anāśrami na tiṣṭheta kṣanamekamapi dvijaḥ' (a twice-born person should not stay even for a moment unattached to some āśrama). Bhisma remained unmarried out of filial devotion to his father and Rāma could not think of another wife as he was so much attached to Sītā. Kumārila boldly asserts that Bhisma had a wife only for the purpose of the sacrifices he performed (though this is mentioned in no Itihāsa or Purāṇa) and relies upon the

mode of proof called *arthāpatti* for this¹⁶⁴³. His words are given below. This and some other explanations offered by Kumārila shed a very interesting light on the theological apologetics of Mīmāṃsakas. Vide H. of Dh. vol. II pp. 558 and 684 for Rāma and the golden image of Sita. As to Yudhiṣṭhira's bringing about the death of his brāhmaṇa teacher the explanation is that the former performed *Asvamedha* after the end of the war by way of *prāyaścitta* (vide H. of Dh. vol. II. p. 147 n. 333 and pp. 1236-37 notes 2674-75 for *Asvamedha* as the remover of all sins). As to Draupadī being the wife of five brothers Kumārila quotes *Ādiparva* 198. 14 (= cr. ed. 190. 14) and offers several explanations (p. 209), the most astounding being that there were five wives of the five brothers who were so similar that they were all referred to as one. As the *Nyāyasūtra* (p. 194) remarks, these various explanations were offered to show off great resourcefulness of interpretation (*parihāra-valbhavārtham*), the proper one being that the practice of the Pāṇḍavas was an evil one and was not to be imitated. A blind man could not perform sacrifices and was excluded from inheritance. Vide H. of Dh. vol. II. p. 157 n. 369 and vol. III p. 609 n. 1154. But Kumārila says that as Dhṛtarāstra was blessed with sight for a while and saw his deceased sons through the miraculous power of Vyāsa (*Āsramavāśīparva* chap. 32-37) he might have been endowed with sight at the time of the sacrifices or what is meant is that he made gifts which are spoken of as sacrifices. As regards Subhadrā, Kumārila asserts that in spite of the fact that Subhadrā was said in the *Ādiparva* (219. 18 = cr. ed. 211. 18) to have been the daughter of Vasudeva and sister of Kṛṣṇa, she was really the daughter of Kṛṣṇa's step-mother's sister or the daughter's daughter of the sister of his step-mother's father (a female cousin being often called a sister among the *Līṅas*). Vide H. of Dh. vol. II. pp. 459-460 and notes to my edition of the text of V. Mayūkha (pp. 200-202). Kṛṣṇa's marriage with Rukmīṇī is to be similarly explained. It is somewhat surpris-

1643. श्रोत्राद्यभिमतलज्जितानर्थाद्वैतनिर्वाहार्थं चर्माचार्येण वर्णयत्तिकमः । इत्युपाय-
नयेन बलपूर्वेणावधारणार्थं चर्माचार्येण साहसम् । व्याससुभा p. 185 : आनुयामेक ... मधुरवर्णः
(मधु १. 1८५) — इत्येवं विनिवर्त्यते च बहुवचनं अपि बहुवचनः केवलपञ्चाशत्तमीसम्बन्ध
आसीद्विषयपर्याप्तकमपि सम्भवे । यो वा विन्दे पितुः दात्रीं विज्ञातेपि न दत्तवान् । आकाश-
निक्रमार्जितो यजेतेकाग्र्यमी कथम् ? सञ्च. p. 208 : अथवा बहुवच एव ताः सद्रूपकया श्रोत्राय
एकत्वेनोपचरिता इति व्यावहारिकपर्यायमा सम्भवे । सञ्च. p. 209 : एवमर्जुनस्य महालक्ष्मणायाः
सुभद्रायाः परिजनेपि सुभद्राया बहुवचकस्यात्यस्य साक्षात् कथितद्वयवचनात् । मीमांसकायै.
p. 48 ; but in the *Ādiparva* 219. 18 Subhadrā is expressly stated to be the
daughter of Vasudeva 'दुहिता वसुदेवस्य वासुदेवस्य च स्वसा'.

camels and animals with two rows of teeth and eat from the same plate with their wives, children and friends; brāhmanas of the south enter into matrimony with the maternal uncle's daughter and take their meals while seated on a couch (of wicker work); both (brāhmanas of the north and south) take cooked food (kept in pots) that remains after their friends or relatives have partaken of it or that has been touched by them (at the time of eating); they chew betelnut leaves that have been touched by persons of all varṇas, do not perform sipping of water (*ūcamana*) at the end of the chewing of betelnut, wear clothes washed by washermen and brought on the back of asses; they do not avoid contact even with persons guilty of grave sins (except of brāhmaṇa murder). There are everywhere an infinite number of very obvious transgressions of the subtle dictates of dharma laid down for each man, caste or family, that (transgressions) are contrary to śruti, smṛti and each other and that have a visible purpose behind them. It is not possible to regard such practices as authoritative.' Similarly Varadarāja, (1600-1660 A. D.) a pupil of Bhaṭṭoji Dikṣita, in his work styled the *Gīrvānapadamañjarī* in a dialogue between a Kānyakubja brāhmaṇa and a *munyāṣen* hailing from Vijayanagara makes the brāhmaṇa host say that each country has certain practices which are *durācāras* such as marrying a maternal uncle's daughter in the south, marriage of girls among southerners even before they are four years old, sitting down to a meal without bathing in Karpātaka, in Mahārāṣṭra the marriage of a younger brother before an elder one. In the hilly country the practice of *niyoga* (vide Mr. P. K. Gode's interesting paper in 'Bhāratīya-vidyā' vol. VI pp. 27-30).

According to Śabara, Jaimini in I. 3. 8-9 deals with certain words like *yava*, *śarāha* and *vetasa*, that have different significances among Āryas and Mlecchas (and therefore these sūtras constitute what is called *yavavarāhādīhikarṇa*). But Kumārila does not like this view of Śabara and proposes another topic for these two sūtras, viz. the relative strength of smṛti and *sadācāra* where they are in conflict. Here there are three¹⁶⁶ possible

166. तेनाचारबलीयस्त्वं समस्तं वेदं दुर्गते । स्मृतीनां वा बलीयस्त्वं शास्त्रस्था वेति वच्यते ॥ उच्यते ॥ अतिमूल्यं न स्मृत्याचारयोः समम् । अयमवयवपीडा हि स्मृतिः सोपनिषन्मना ॥ तथा अत्युत्तमानं हि निर्दिष्टमनुजायते । आचारास्तु स्मृतिं ज्ञात्वा अतिविज्ञापते ततः ॥ तेन दृष्टान्तरितं तस्य मानार्थं विप्रकृत्यते । ... तेनाचारः स्मृतिं पापदुष्कृतात् प्रवर्तते । स्मृतिर्दृष्टान्तरितानामनुमेयानाचारयेत् ॥ तस्मादाचारेणः स्मृतिर्बलीयसी सञ्जिगम्यतेति । तन्त्र, pp. 220-221.

views, viz. that both are equally strong and so there is an option in case of conflict, that *ācāra* is stronger, that *smṛti* is the stronger of the two. The *prima facie* view is that both are equally strong, since *smṛti* and *sadācāra* are both inferred to be based upon Veda. Kumārila's own final conclusion is that *smṛti* is of greater force than *ācāra*, that is, where they come in direct conflict *smṛti* should prevail. His position is that, though both *smṛti* and *ācāra* are to be deemed to be based on Veda, there is a difference between the two. People have full faith in such *smṛtis* as that of Manu and Manu and others are believed to have been inspired sages and are the propounders of the rules of dharma scattered about in various Vedic śākhās, while the same cannot be said about modern men and their practices cannot claim or possess the same weight and allegiance that the practices laid down by Manu and other sages can. From the practice of *śiṣtas* one may infer a *smṛti* as the root thereof and then further one may infer a *śruti* as the root of the *smṛti*. Therefore *ācāra* is removed by two stages from the Veda, while *smṛti* is removed only by one stage from the Veda. Hence Kumārila says that in case of conflict *smṛti* should prevail over *ācāra*. The practices that are discussed here (acc. to Kumārila, Pārthasārathi and others) are such as the marriage with a maternal uncle's daughter or with a paternal aunt's daughter and the like that are in vogue among certain people and that are yet opposed to *smṛtis* (such as Manu XI. 171-72) and for which a visible motive can easily be found (*kūmārilīhetuvantarāḥ spṛṣṭamānā drāḍyāḥ*, as the *Sastrapīkā* says).

Kumārila gives another (and so a third) explanation of Jai. I. 3. 8-9¹⁴⁴⁷ which need not detain us here.

1447. समा विनियमिन् दद्यात् । शास्त्ररथा वा तद्धिमित्तत्वात् । जै. I. 3. 8-9. Acc. to कुमारिल here शास्त्र means स्मृति, while acc. to Sabara's gloss शास्त्ररथा means निषा. Sir G. Jha in 'Pīrvamīmāṃsā in its sources' p. 226 translates 'giving and accepting in gift and buying and selling lions, horses'. केसरिन् means 'a lion' also, but it is hardly possible to believe that gifts of lions were made to brāhmanas or that they accepted them. केसरि must be taken as an adjective of 'śva' here. The शास्त्रदीपिका on III. 4. 34 remarks, हेन एव घोषस्त-प्रेष्टिः । लीकिके चान्द्रदाने न केसरिणो दद्यान्ति यन्निषेधाद् दोषोति वेदिके तु कर्माहुदाने निषेधविधानात्तन्निषेधात्तद्वेतनसि दोषः. This shows that the prohibition against the gift of 'keśarin' refers to the gift of horses. Sabara on Jai. VI. 7. 4 makes this quite clear when he says that in the Vīṭarjī where the sacrificer had to make a gift of all his wealth, horses

Jal. I. 3. 15-23 constitutes what is called Holākādhikarāṇa, or Samsānyasrutikalpanādhikarāṇa. The first two and the last two sūtras are the most important. Certain practices¹⁶⁴⁸ like the Holākā (spring) festival are observed by the easterners, certain others like Ahinaibuka (worship of growing Karañja or Arka or other trees as handed down in one's family) by the southerners, and the Udyasabbhayajña (honouring oxen on the Full Moon of Jyestha and making them run a race) by the northerners. The question is: whether, in making an inference about these practices being based on Veda, one was to suppose that the inferred Vedic text also should be restricted to the easterners and the like¹⁶⁴⁹. The pūrvapakṣa view is that the gr̥thi to be inferred as the basis of the respective practices must be deemed to be restricted to certain persons only (such as the easterners i. e. *pūrvicys* &c.). The established conclusion is that

(Continued from the last page)

should not be gifted on account of the prohibition contained in 'he does not give *kesarin*': एष हि विस्वस्योन्वातामरंवेभ्यो द्रव्येभ्यो यदेवां दानं प्रतिपिपत्ते न केसरिणो दद्याति नीमपत्तोदकः प्रतिपुष्टातीति विस्वात्रिंशेव समान्नायके. The *मीमांसाकी*, (pp. 60-61) explains the सूत्रः 'अथान्धार एव चलायन् ... तद्वन्हीकरणे तु परं समा विप्रतिपत्तिः भवेत् न तु स्मृतिवाच्यत्वमिति सूत्रार्थः । सिद्धान्तस्तु स्मृतिशास्त्रस्यैव प्रतिपत्तिर्हीनपत्ती ।', on तज्जिमिषत्वात् the व्यासमुखा observes 'तज्जिमिषत्वादिति शास्त्रत्वसामान्येन चकृतत्वाद् वेदात्तत्वं ज्ञातं तच्छब्देन परास्मरणं भुविमूलत्वं हेतुत्वेन तच्छब्दोभयोः स्थापयिकरणे तानि विरोधे पुनरुक्त्यमानमाचार्याणां स्मृतिमूलत्वरसंत्तपार्थम् ।' (p. 212).

1648. अनुमानस्यवस्थापनात्तत्तदुक्तं यमाणे स्यात् । अपि वा सर्वधर्मः स्यात्तत्तदप्यपत्तिः विधानस्य । ... कर्मधर्मो वा प्रत्ययत् । तद्वत् तु कर्तुं धर्मेण । जै. I. 3. 15-23 ; अनुमानस्तु स्मृतेराचाराणां च सामान्यनिरपत्ते । तेनैव हेतुना ते यमाणे तेनैव व्यवस्थिताः यामाग्यमर्हन्ति । तस्मात्तु होलाकादयः प्राचैरेव कर्तव्याः, आह्वीनिष्टकादयो द्वालिण्याचैरेव, उद्ग्रहणमग्न्यादय उद्गीचैरेव । ... अपि चेति यज्ञस्याहतिः । एवेकातीत्यक्तः सर्वधर्मः स्यात् । कुतः तत्तत्तदपत्त्यात् विधानस्य । निषिधत्तेनेनेति विधानं ज्ञम् । सोऽनुमीयते स्मृत्या । ... तस्मात्सर्वधर्मता विधे-
न्योऽप्या । ज्ञातः, the word अनुमान means लिख or अनुमापक or कल्पक. The first two सूत्र may be briefly but closely paraphrased as 'अनुमानस्य कल्पकस्य व्यवस्थितत्वात्प्रमाणमूलभूता भुविः व्यवस्थापकोपपदत्तुक्तः स्यात् । न व्यवस्थितमूलत्वं भवितु-
मर्हति, अपि तु सर्वधर्मः स्यात् । मूलभूते विधानेन वाच्ये सर्वधर्मोपपदादयस्य स्थापय-
सत्त्वात् ।' *मीमांसाकी*, pp. 100-101. This अधिकरण is called होलाका because the first example in शास्त्रभाष्य refers to the practice of होलाका, येषां, on ननु VIII. 46 refers to उद्ग्रहणमग्न्या as a practice of the northerners. The जै. व्या. मा. explains: 'वसन्तोत्सवो होलाका । स्वस्त्युक्तान्तं परञ्ज्याकीर्तिराजतर्द्वयतापूमादिकमाह्वीनिष्टकाज्ये-
नेत्युच्यते । उपेक्षमासस्य पौर्णमास्यां चतीवर्द्धान्त्यस्य चोपपत्तिः सोमसुप्रवृत्तमग्न्याः ।'

1649. Vide the following remark about the demand for the divine origin of laws and usages from Barolsheimer: "historically political power, legal regulation and customs were popularly conceived as expressions of the Divine Will" (Author's Preface, p. XLIV, in 'the World's Legal Philosophies').

such practices must be deemed to be meant for all, since the general rule about vedic injunctions is that they are applicable to all. The performer specially meant by each Vedic injunction is known in either of three ways,¹⁶⁵⁰ viz. by capability, by non-prohibition and by the employment of a special epithet or attribute. When it is said '*svargakāmo yajeta*' then only the three twice-born classes are meant, for, they alone are capable of tending the sacred fires and of possessing Vedic learning and a *sūdra* is not a fit person to whom that injunction can apply. Those who are guilty of grave sins (*patita*) and the impotent are prohibited from performing Vedic rites. When the Veda says '*rājā rājasūyena yajeta*' there is a special attribute of the performer (viz. being a *ksatriya*) prescribed by the *śruti* and so no one else can perform *Rājasūya*. When none of these three exists a Vedic *vidhi* is in general meant for all (*sarvadharmā*). The practices of *Holāka*, *Vṛabhayajña* and the like should not be held to be restricted to certain countries or people only, but should be inferred to be applicable to all. When a man leaves the east and goes to the south, he may still perform the *Holāka* festival; while a man from the eastern country itself may not perform it at all. Further the words 'southern, eastern and northern' are relative. A country that is called southern may be to the north of another. Therefore *Holāka* and other practices are not invariably concomitant with particular countries or peoples. Nor can it be said that those practices require those particular countries for their performance in the way in which *śruti* expressly requires the *Vaiśvadeva* rite (one of the four *cāturmāsya*) to be performed on a spot that slopes towards the east. The *Tantravārtika*¹⁶⁵¹ points out that persons receive appellations from names of countries on various grounds as being born in a country or as residing therein or as coming from that country or as going to that country. *Madhātithi* on *Manu* VIII. 46 says the same.

1650. विधौ ज्ञाते कर्ता विशेषेण प्रतिक्रियन् । योग्यतायतिषिद्धत्वविशेषोपपदान्वयैः ॥
सूत्र. p. 243 ; यस्माच्छ्रुतमात्रे द्रव्यं विधायकवाच्यमधिकरोति नातिरिक्तं निदिधनमपेक्षते
समाख्यस्य सर्वविधयतिषिर्ध्वं ग्राह्यमित्यर्थः । भाष्यमुद्रा p. 246 (explaining यस्माच्छ्रुतमात्रं
विधानस्य) .

1651. सर्वत्रैवैतन्निर्दिष्टसमाख्या हि प्रकृते । निवास-भव-जातव्य-तद्व्ययमन्तेतुभिः ॥
सूत्र. p. 251. The last half refers to Pāṇini IV. 3. 89, IV. 3. 33, IV. 3. 23, IV. 3. 74 respectively ; यस्माद्विदुसमाख्यापि अभिचारिणी तद्व्ययमन्तेतुभिः
कथापिद्वानाचरणान् । विरचितिनितपुत्रादीनां चासत्यामपि समाख्यायामाचरणान् ।
समाख्यस्य (विधिषु) सर्वधर्मलगाचरणानां स्मृतीनां चेति सिद्धम् । ज्ञातृदीपिका (at end
of Jal. I.3. 23) .

The *Tantravārtika* explains that the first two sūtras are meant to refer to another question also, viz. whether the rules of the gṛhyasūtras¹⁶³² and of such dharmasūtra works as the sūtra of Gautama are authoritative only as to certain groups or are meant to be authoritative for all. He begins by saying that the Purāṇas, the Manusmṛti and Itihāsa (i.e. the Mahābhārata) are equally authoritative for all people and then points out that the Gobhila-gṛhya and Gautama-dharmasūtra are traditionally accepted by the students of the Sāmaveda, that the dharmasūtra of Vasiṣṭha is accepted by the students of the Rgveda, the sūtra of Śaṅkha-Likhita by the followers of the white Yajurveda and the sūtras of Āpastamba and Baudhāyana by the followers of the Taittiriya Śākhā. The *Śāstradīpikā* explains that an author who was a student of the Sāmaveda taught his own work to his pupils who also learned the Sāmaveda under him, that these pupils in their turn taught that work to others and in that way there arose a tradition among the students of the Sāmaveda to study the sūtra of Gautama. Therefore, to say even as to gṛhya works that they are restricted to particular groups of persons is not correct. Similarly in the case of practices there is no epithet or attribute that is common to all those who practise them or which distinguishes those who do not observe them from those that observe them and therefore it is not possible to restrict such practices as Holāka to particular countries or groups of people.

The requisites of valid customs as laid down by the eminent writers of the Pūrva-mīmāṃsā school may now be summarised. Such customs must be ancient, must not be opposed to the express texts of the Veda or of smṛti, must be such as to be regarded as obligatory by the śiṣṭas and must be observed

1632. देशधर्माद्विवाहस्य संपादेवद्विचार्यते । किं अपरिधत्तमूलरते किं वेदो सर्वधर्मता ॥
... अथं ब्रह्मये वायदिदमप्यत्र चिन्तयताम् । शुद्धगीतमहर्षादिभ्यस्त्वध्याससर्वगमिति ॥ पुराणमा-
नवेतिहासम्पतिरिक्तगीतमसिद्धश्रुतिजितहारीतापस्तम्बशौषाणादिवगीतधर्मशास्त्राणां शुद्ध-
ग्रन्थानां च मतिशाल्यपलक्षणव्यतिचारणे पाठव्यवस्थोपलभ्यते । तदथा । गौतमगोभिलीये
छन्दोगेभ्यश्च परिपूर्वते । वासिष्ठे बहुवचरेण श्रुतिलिखितं च वाजसनेयिणि । आपस्तम्बीय-
शौषाणनीये तैत्तिरीयेषु प्रतिपद्ये । इत्येवं तत्र तत्र शुद्धग्रन्थान्धुपगमादि दर्शयित्वा विचार-
यितव्यम् । किं तानि तेषामेव प्रमाणानि, उत सर्वाणि सर्वेषामिति । तन्त्र. pp. 243-244 ;
कतां हि छन्दोगः सशिशिरांछन्दोगान् सव्यवधमन्त्रापयामास तेष्वप्यांछन्दोगानित्येवं
गीतगीतस्य छन्दोगे पाठः । तथापस्तम्बग्रन्थस्य तैत्तिरीयेरेव शुद्धग्रन्थानामपीति अपरिधत्त-
धर्मविषयत्वमपमानकम् । आचार्याणां तु सर्वाचारिधनुमतमचारितुस्य व्यावृत्तमाकृति-
व्यक्तिगुणसंरधानादिकं न किञ्चिद्विरोधनं संभवति बहुपादान्दोलाकायधिकारं विनिश्चयम् ।
शास्त्रदीपिका p. 42.

by them with the consciousness that they are so, they must not have a seen or visible purpose, and they must not be immoral¹⁶⁵³. It has to be remembered that the *pūrvamīmāṃsā* writers did not lay down anything about the binding character of usages that were peculiarly secular but restricted their remarks to customs and usages that had more or less an unseen or spiritual purpose. Khaṇḍadeva emphasizes this by stating 'only those customs can be deemed to be based on the Veda that are not opposed to the Veda and *smṛti* and that are observed by respectable people under the belief that thereby they are carrying what dharma dictates'¹⁶⁵⁴. Medhātithi on Manu¹⁶⁵⁵ II. 18 makes this position quite clear after quoting a verse of Kumārila 'a *smṛti* that is opposed to the Veda or is self-contradictory, or has a visible secular purpose or expressly states a motive (for observing its precepts) cannot be deemed to be based on the Veda'. The *Mīmāṃsā-kaustubha* (p. 51 on Jai. I. 3. 7) quotes a verse to the effect that 'only those whose ancestors also observed certain usages handed down from generation to generation would not incur blame by observing them (if they are opposed to *śruti* or *smṛti*), but not others (who

1653. वस्तु अद्विच्छन्नाद्व्याघातीनां सुस्वापानं द्वाविधितया च नानुलक्षणापरिणयादि मय केचिद्वैयं पश्चिन्नमि 'येषां परम्परानामाः पूर्ववैरप्युद्धिताः । त एव तेनं पुनरेवमाचारैर्नैतरे जनाः । इत्यापस्तम्बवचनात्, 'येनान्य पितरो ... दुष्टपति' इति मनुवचनाच्च देशान्यवस्थायां सुस्वाचारयोः सामान्यम् । अतश्च परिमलं द्वेषो य आचारः पारम्पर्यक्रमगतः अतस्तद्वन्देश-विषयेषु तन्निषेधस्मृतिरिति न निरोध इति । तन्न ... आपस्तम्बवचनं तु महागिराकरणपरतया न्याल्लेखं मनुवचनं तु सती मार्गमिति निषेधणाद्विद्वद्भाष्यपरम्पर्यासुषेवमिति न चिरोपः । अतश्चाद्विच्छन्नाद्व्याघातीनां सुस्वापानाद्वैरनाचारत्वमेव । मी. को. p. 51 (on जै. I. 3. 7).

1654. स्मृतिस्मृत्यनिरुद्धानां शिर्षैर्मनुवृद्धयाद्युदीपनानामनाचाराणां वेदमूलकत्वम् । अत एव स्मृतौ 'स्मृतिस्मृत्यनिरुद्धो वा स सदाचार उच्यते' इत्युक्तम् । वातिकं तु आपांशानि-तामिश्रितयोग्यत्वमेव सदाचारलोपलक्षणम् । अतश्च तत्रैव स्मृतिकल्पनमिदमुक्तम् । परतस्तु आपांशवर्तमानानामप्याचाराणां स्मृतिस्मृतिविरोधेऽप्याद्यत्वात्तस्यैव सदाचारोपलक्षणत्वं न युक्तम् । अतश्चाचाराणामपि स्मृतिमूलकत्वात्पानाण्योपपत्तिः । मीमांसाकौस्तुभ pp. 43-44 (on जै. I. 3. 7).

1655. न च दुष्टकारणयोः सुस्वाचारयोः सामान्यम् । उक्तं च महापादैः । विद्वद्वा च विधीना च द्वाधाविद्विष्टकारणे । स्मृतिर्न स्मृतिमूला स्थाया चेपा सम्भवत्युतिः । मेधा. on मनु II. 18. This verse refers to five classes of *smṛti* texts that cannot be based on *śruti*. द्वाधायां च आदिद्विष्टकारणे च द्वाधायां विद्विष्टकारणे (स्मृति) : या च एषा सम्भवत्युतिः is the fifth class, but the meaning is not clear. Sir Ganganath Jha in his translation of Medhātithi does not say whence this verse is taken, nor does he correctly render the words विधीना and द्वाधायां विद्विष्टकारणे and he omits altogether the fourth pāda. The words या चेपा सम्भवत्युतिः appear to mean 'that *smṛti* which declares its promulgation (by a sage) is not to be deemed to be based on Veda (since otherwise Veda will be held to be not *utīya*)'.

cannot rely on such a state of things)'. In a learned discussion on *bādhas* Kumārila in his *Tantravārtika* (on Jal. III. 3. 14 pp. 859-860) brings together many *bādhas* out of which those that are relevant to this discussion are given in the note below¹⁶⁵⁶. It says that inference is set aside by direct perception, *smṛti* by *śruti*, a *smṛti* not composed by an authoritative person and that is self-contradictory is set aside by a *smṛti* that is authoritative and not self-contradictory, a *smṛti* that has a visible worldly purpose by one that has an unseen spiritual purpose, a *smṛti* based on inference drawn from a *śruti* or based upon a commendatory vedic passage is set aside by a *smṛti* based upon (a direct) *śruti* text, a usage is set aside by a *smṛti* and one usage is set aside by another usage that is accepted by more respectable people &c.

1656. अथ यत्तत्र तत्रोच्यते इदमेत वाध्यते (अथर) — प्रत्यक्षेणानुमाने ... श्रुत्या स्मृतिः, आत्मविगीतस्मृत्या अनात्मविगीतास्मृतिः, अनुदार्पणा दूराधी, क्षुतिमभवया लिङ्गादियम-
वार्थवाच्यमवा च, स्मृत्वाप्याचारः, सोऽप्यभिप्रेक्ष्यतयाचार्येण सन्निवृत्तसंविद्येन, &c. तत्र-
वास्तविक pp. 859-860.

CHAPTER XXXIII

CUSTOMS AND DHARMAŚĀSTRA WORKS

It is now necessary to see how Dharmaśāstra works have dealt with the authority and binding force of customs and usages. *Sūlācāra* is defined by Hārta as follows¹⁶⁵⁷—the word 'sat' means 'good' and the good are those who are free from (moral) taint; the practices of such people are called *sūlācāra*. Vide Manu II. 18, which also defines *śāścāra*. Even the most ancient sūtras testify to the fact that numerous customs and usages had arisen in different countries and villages. The Āsv. gr. (I. 7. 1-2) says,¹⁶⁵⁸ 'various indeed are the observances of (different) countries and villages; one should follow those in marriages; what, however, is common (to all or most) shall be declared by us'. The Āp. gr. (II. 15) declares, 'people should understand from women what procedure is to be observed (according to custom)' and the Āp. Dh. S. provides (I. 7. 20. 8 = II. 11. 29. 14) that one¹⁶⁵⁹ should regulate one's course of action (in difficult or doubtful matters) according to the conduct which is unanimously approved of in all countries by the Āryas (men of the three higher castes), who have been properly disciplined, who are aged, who have restrained their senses and who are neither covetous nor hypocritical and concludes with the aphorism (II. 11. 29. 15) 'some teachers hold that the rest of the dharmas (not set out in this work) may be understood from women and from men of all castes'. Band. Dh. S.¹⁶⁶⁰ (I. 5. 13) states (on the subject of śrāddha) 'the usages of people should be followed as to other rites to be performed'. Several grhyasūtras (like Pāraskara II. 17, Mānava

1657. साधनः क्षीणदोषाः स्युः सख्यव्युद्ः सत्पुत्राचकाः । तेषामाचारं यत् स सदाचार उपपद्यते ॥ हारीत पृ. by परा. न. I. part I p. 144. This is विश्वपुराण III. 11. 3 quoted by the दीपकलिका on वा. I. 7 as from that पुराण.

1658. अथ सत्पुत्राचका जनपदधर्मा दानधर्माश्च सान् विवाहे प्रतीयात् । यत् समानं तद्व्यापनः । आश्व. सू. I. 7. 1-2 ; vide H. of Dh. vol. II. p. 441 n. 1049 for remarks of हरवृत्त and नारायण on these sūtras.

1659. सर्वजनपदेष्वेकान्तसमाहितमार्गाणां ब्रह्म सम्प्रतिनीतानां ब्रह्मानामात्मवतामहोत्तुपानामवाभिमतानां वृत्तसामुदायं भजेत् । एवमुभौ लोकावभिजयति । स्त्रीभ्यः सर्ववर्णैश्च धर्मशान्तिपादित्येकैः । आप. प. सू. II. 11. 29. 14-15. The first sūtra is the same as आप. प. सू. I. 7. 20. 8.

1660. देशविषयाणो लोकोपदेशद्वयः । बौ. प. सू. I. 5. 29.

gr. I. 4. 6) refer to the practices of people that should be followed in such matters as commencing agricultural operations, holidays &c. It is needless to set out these in detail here. Manu¹⁶⁶¹ IV. 178 pronounces the general prescription for all men, 'one should walk in the path of good men which their fathers and grandfathers trod; by so doing one will come to no harm'. For ordinary men this procedure is easy to understand and to follow. This dictum sets a premium on the attitude of no change in any matter for fear that change may lead to some unexpected harm and has been throughout the ages up to the present the motto of most people in India. As *śāstra* or *sadāśāstra* is tangible and requires no effort to decide between conflicting views, we find eulogies of it in the earliest *smṛtis* and *purāṇas*. Vide Manu IV. 155-158, Vas. VI. 6-8 (the first and last of which are the same as Manu IV. 157-158), *Anuśāsanaparva* 104. 6-9, *Viṣṇu Dh.* 8. 71. 90-92 (which are almost the same as Manu IV. 155, 156, 158), *Mārkaṇḍeya* chap. 34, *Brahmapurāṇa* 121. 6-9, *Viṣṇu-purāṇa* III. chapters 11-13, *Kūrmapurāṇa* (*uttarārḍha*, chap. 15).

The general rule about the binding character of customs is set out as follows. Gaut. (XI. 20) observes,¹⁶⁶² 'the *dharma*s (customs) of countries, castes and families, which are not opposed to the Vedic scriptures, are authoritative and binding'. Gaut. provides in the next two *sūtras* that cultivators, traders, herdsmen, money-lenders and artisans can lay down conventions or usages that would be binding on the respective classes, that when a dispute arises as to these usages the king should learn affairs from those who wield authority over those classes and decide the dispute accordingly. Vas. I. 17 states, 'Manu has declared that the (peculiar) customs of countries, castes and families may be followed in the absence of rules propounded by the Veda', and in XIX. 7 prescribes that the king should

1661. वेदास्य विप्रस्य यासा येन यासाः सिवामिहाः । तेन यायास्ततो मार्गं तेन गच्छत्य-
रिच्यति ॥ मनु IV. 178. The *तत्त्वसारिका* p. 211 (on *lai.* I. 3. 7) quotes this, reads *दुष्पति* for *रिच्यति* and remarks 'वेदां तु या विप्रविभिरेवार्थो नाचरितः स्मृत्य-
न्तरपतिपिद्वयं तेन वरितव्यमेव' । मेघा. very appositely explains, अविदुषां मूलम-
जानाभास्यपदेभ्योपमिति । ... यदि पितृपितामहादिभिः केष्विदमर्थचिदप्यमं आचरितपूर्वः स न
अज्ञपनीय इति सतां मार्गमित्याह । Vide also *मिता.* on *ya.* I. 224 where मनु
IV. 178 is quoted and H. of Dh. vol. II. p. 460 n. 1086 where मेघा. on मनु
II. 18 is quoted.

1662. देशजातिकुलधर्मोभासापेक्षविद्वद्भिः समाणम् । कर्षकविक्रयपशुपालकुसीचि-
कारका स्वे स्वे वर्गे । तेष्वप्यत्र प्रथाभिकारमधर्मित्ववद्भूत्य धर्मव्यवस्था । सो. XI. 20-22 ;
देशधर्मजातिधर्मकुलधर्मोभ्युत्पन्नासादवर्गीभूतः । बसिष्ठ I. 17.

enforce these among the four varṇas. Āp. Dh. S. II. 6. 15. 1 appears to lay down that the customs of countries and families (if not opposed to Veda) are authoritative and are to be followed in the respective countries or families. But this view seems to be unacceptable to Baudh. Dh. S. (I. 1. 19-26) which says,¹⁶⁶³ 'there is difference of opinion regarding five (practices) in the South as well as in the North. We shall explain those peculiar to the south. They are: to eat in the company of (in the same plate with) one whose upanayana is not performed, to eat in the company of one's wife, to partake of stale food, to marry the daughter of a maternal uncle or of a paternal aunt. Now (the customs peculiar) to the north are: to sell wool, to drink rum, to deal in the sale of animals with an upper and a lower row of teeth, to follow the profession of arms and to travel by sea. He who follows (these practices) in any other country than where they are generally in vogue commits sin. For, in respect of these customs the authoritativeness must be restricted to the respective countries. Gautama declares that this is false. And one should not approve of (accept) either (of the two sets of practices), because they are opposed to the tradition of śāstras (or opposed to the smṛtis and the views of śāstras)'. The Tantravārtika¹⁶⁶⁴ (p. 211) mentions the argument of some concerning these passages of Āp. and Baudh. viz that Āpastamba's very general statement that practices of countries and families are authoritative in the respective countries cannot be accepted

1663. पञ्चधा विवर्तिष्यतिर्द्विष्यतस्तथोक्तम् । यानि दक्षिणतस्तानि न्यायपारम्यः पञ्चैकमुपेत्य सह भोजनं विना सह भोजनं पर्युपितभोजनं सातृलपिपुण्यदुहितुमनमिति अयोधरत जर्भाधिक्यः संयुपानसुदृष्टिपानादपि आधुपिकं समुद्रमंथनमिति । इतर-दितरस्मिन् कुर्वन् दुष्टपत्नीरदितरस्मिन् । तत्र तत्र देशप्रमाणमेव स्यात् । निवर्तितदिति गौतमः । त्वमन् चैव नाद्विषय इति स्मृतिविरोधदर्शनात् । बौ. ध. सू. I. 1. 19-26. The स्मृतिच. I, p. 19 explains: इतरी दक्षिणागः इतरस्मिन् देशे उद्दिष्टदेशे अनुपनीतभोजनं कुर्वन् दुष्टपत्नीम् न स्वदेशे । कुतः देशप्रमाणपात् तद्वैतानिपग्नयथातमाम्गवर्धयेत् । Compare स्मृतिरत्न q. by स्मृतिहृ. (वर्णनम् p. 130) 'अजह्मचारिद्वाराद्यैः साधो भोजनकर्म च । भ्रातृताद्विद्युतायां च विवाहः शिष्टसंमतः । इत्येते दक्षिणागचानामपि गीता (मरिचिताः) उदाहरताः । सहव्रतान् मौनस्य भक्षणं शस्त्रजीविका । संयुपानसुदृष्टिपानामभिव्यक्तानि धर्मतः ।' Taking food in the same plate with one's wife is forbidden by Manus IV, 43 and Yāj. I. 131. Vide H. of Dh. vol. II p. 765 n. 1833.

1664. सर्वेपानेनानुवीर्यं यतिदेशं स्पष्टयथा । अपस्तम्बेन संहर्य दृष्टादुष्टत्वमाश्रितम् । येषां परम्परामात्राः पूर्वैर्येऽप्युद्धिताः । त एव तेन दृष्टेयुराचारैर्निरत जनतः । ...ततश्च सम्भावि-काश्चभविष्यद्वाचाराणां प्रमाणमज्ञापयन्मुपमन्तुम् । अपस्तम्बवचनं तु बोधाधनेन स्मृति-विरोधदृष्टाचारैर्द्वाराणांमेव मन्त्रकृता निराकृतम् । स्पष्टकामादिहृत्स्वन्तरद्वाराणां विवक्षा-चाराणामपस्तम्बवचनस्य वा धृतिमूलत्वोपपत्तिः । तत्र. p. 211. The स्म. य. p. 22 quotes the verse येषां परम्परा and remarks 'न दृष्टेयुः अपवहाराणां राजदण्डाच्च न भवेद्विस्तृष्यः ।'

as valid, as it is opposed to the views of Gaut. (XI 20), as Baud. expressly states that certain practices though prevalent in certain localities cannot be accepted as valid and binding even in those localities because they are opposed to the express words of such authoritative and highly venerated smṛtis (as those of Manu). Manu in several places provides for the enforceability of customs and usages. In Manu VII 203 it is said, 'the conqueror should hold as authoritative and binding the lawful customs of the conquered country, just as they are stated to be' and in Manu VIII 41 and 46¹⁶⁶⁵ it is provided, 'A king who knows dharma (sacred law) should carefully inquire into the customs of castes, of countries, of guilds and of families and settle (or enforce) the customs peculiar to each. Whatever may have been practised by the good and by twice-born men devoted to dharma, that shall be established (by the king) as the law, provided it be not opposed to the (customs of) countries, families and castes'. Medhātithi adds that the king has to see whether the customs of countries, families, castes and guilds are directly in conflict with the Veda or are harmful to others or utterly immoral (such as marrying one's mother) and only those that are found not to be so are to be enforced by the king and he¹⁶⁶⁶ adds on Manu II, 6 that the practices of sīstas (persons who are well conducted, free from greed and learned in the Veda) on matters on which the Veda and smṛti are silent and which they observe with the consciousness that they (practices) are right (dharma) should be deemed to be based on Veda. He offers certain illustrations of such practices and also

1665. आदिजानपदान्धर्मान् श्रेणीधर्मोऽथ धर्मविदुः समीक्ष्य कुलधर्मोऽथ स्वधर्मं गतिपादु-
येतु ॥ मनु. VIII. 41, on which मेधा. remarks 'समीक्ष्य विचार्य किमागन्तव्यं विदुः आ-
न तथा पीडाकराः करणचिदुत न एवं विचार्य देशविक्रान्तात् गतिपादुयेतु अनुष्ठानं विदुः धर्मः ।
... मनुविवाहादिः सार्वभौमेन निवारणीयः । ... एककार्यापत्त्या वनिकूलात्कुलसंतुष्टात्
विवादाद्यः तेषां धर्मो श्रेणीधर्मोः'. It should be noted that in other works also the Pārāśakas were credited with the highly immoral practice of marrying
one's own mother. Vide यज्ञसिद्धकथम् 'श्रुते हि वृद्धिमण्डले दुर्पितदोषाच्चूदेव्यास-
कोपयोगं पारसीकेषु च स्वसन्निधौसंदोगः सिद्धतेषु विधामिषसुतिमेषां इति ।' (4th
आध्यास p. 25). The स्मृतिच. (I. p. 10) and स्मृतिह. (पलाशस p. 130) quote
several verses from an anonymous smṛti one of which is तथा मातृविवाहोपि
पारसीकेषु दृश्यते.

1666. आचारश्चैव साधूनां चक्रवर्तेन वेदविद्वानिति सम्प्रचयते । एवमेव शिष्टैर्
दृश्यते । शिवानां च आचारः सोपि धर्मो मृतम् । आचारो न्यवहारः अनुष्ठानं यत्र सुखिसुखि-
मास्थाने न सन्ति शिष्टाश्च धर्मेषु दृष्ट्यानुष्ठानि तदपि वैदिकमेव दृश्यन्तीत्यवश्यम् । यथा
विवाहादौ कङ्कणपञ्चनादिमाङ्गलिकत्वेन यत् क्रियते या च कन्याचारतद्दर्शित्वादिगण्यमानायाः
नक्षत्रावक्षयपञ्चतुष्यधादिपूजा देशभेदेन तथा पूजासंख्या वेदभेदेन (वाच 1) या चाति-
व्यादीनां मुखादीनामनुष्ठुतिः विपश्चित्तजनाभिवादान्कुलानादिक्रिया । मेधा. on मनु II. 6.

relies¹⁶⁶⁷ upon the words of the Mahābhārata (Vanaparva 313. 117), 'what is true dharma is concealed as in a dark cave; the (only) path is to follow great men'. In I. 118 Mann declares that the ancient (or long enduring) laws (or customs) of countries, castes, families and the rules among heretics and companies (of traders and the like) have been dealt with by him in the śāstra (Institutes). Yāj. I. 343 provides that when a conqueror reduces a country to subjection he should preserve intact whatever customs, laws and judicial procedure, and family usages are handed down from generation to generation therein (provided they are not opposed to śāstras and, as the Mīl. says, he should not cause confusion by imposing the usages of his own country on the conquered country). Yāj. II. 192 (like Mann and Gaut.) provides that the varying usages and conventions of śreṇis (guilds of artisans), naigamas (traders), heretics and associations (of soldiers and the like) should be respected by the king in the same way as he honours the usages of learned brāhmanas. About the latter Yāj. II. 186 says that the king should sedulously enforce the conventions of learned brāhmanas which are not opposed to the dictates of the Veda and smṛti (such as about pastures, water-courses and wells and the preservation of temples) and he should also enforce his edicts that are not opposed to Veda and smṛti (such as making provision for travellers and prohibiting the sale of horses to an enemy &c.). Kauṭilya prescribes¹⁶⁶⁸ that the king should follow as regards inheritance and partition the customs that are in vogue in a country, a caste, a *śaṅgha* (company or guild) or a village. Devaś¹⁶⁶⁹ and Brhatparāśara (X. p. 281) have a verse very similar to Yāj. I. 343. The Mahābhārata remarks that there is no custom or practice that can be said to be beneficial

1667. अथर्षेऽप्यं न्यायो महाजना येन वा स पन्था इति...। विद्वांसो ह्यत्र निष्कामाः पशुचिदूर्वा अविद्याः लोके । अध्यायमाणि कीं पशुति सापि वेदमाम्नायामिद्वेति । मेघा. ०० मनु II. 1. The whole verse is : 'तर्कोऽतिष्ठः सुतपो विमिक्षा नैकी क्षत्रिर्वैश्य मने प्रसाधम् । धर्मस्य तर्कं निहितं सुहायं महाजना येन वा स पन्थाः ।' वनपर्व 313. 117; the words 'धर्मस्य तर्कं निहितं सुहायं' are quoted by निष्काम ०० वा. I. 2.

1668. देशस्य जात्या सङ्गृह्य धर्मो ग्रामस्य वापि यः । उचितस्तस्य तेनैव क्षापयते प्रकल्पयेत् ॥ अर्थशास्त्र III. 7. p. 163; अक्षपदलमश्वसः... निषण्णपुस्तकस्थाने कारयेत् । श्रावधिकरपालो संकरो... देशमामजातिहुलसङ्घातानां धर्मव्यवहारचरित्रसंस्थाने... निषण्ण-पुस्तकस्थाने कारयेत् । अर्थशास्त्र II. 7 p. 62.

1669. धर्मिभ्योऽपि धरे धामे वैमिषे भवत्येव वा । यो यत्र सिद्धिर्न धर्मस्तं धर्मं न विचारयेत् ॥ देश- 1३ मनुस्मृति- I, p. 10.

to all alike¹⁶⁷⁰. From this it follows that variations in practices were to be tolerated by the king. Brhaspati¹⁶⁷¹ advises the king to keep intact the customs of countries, castes and families that have been long in vogue in them and states that otherwise the subjects become irritated and disaffected and there is loss of wealth and army. He gives certain striking illustrations of peculiar practices: 'members of the twice-born classes in the southern countries take in marriage their maternal uncle's daughter; in the middle country (the country between the Himalaya and the Vindhya lying to the west of Prayāga and to the east of Vinasana where the Sarasvatī disappears, as said by Manu II. 21) artisans and menial workers eat the flesh of a cow; in the eastern countries people (all including brāhmanas) eat fish and women are given to adultery; in the north women drink liquor and contact with them even in their monthly illness is allowed; the people of the *Khakha* country take as wives the widows of their own brothers; these several people are not liable to undergo punishment or penance because of their doing these things in the respective countries'. Medieval writers differed about the meaning of the last half verse. The Madanaratna said (acc. to V. P. p. 22) that there is neither punishment nor *prāyascitta* when the above practices which are opposed to *śruti* texts are indulged in by the inhabitants of the countries specified, while the V. P. p. 22 holds that there is only absence of punishment at the king's hands for these people in those countries, but they are still liable to undergo *prāyascitta* and that if these practices are followed in other countries both punishment and *prāyascitta* have to be undergone.

1670. न हि सर्वलिख्यः कश्चिद्वाच्यः सेवयेते । जाम्बि 261. 17.

1671. देशजातिकुलानां च ये धर्मोक्त्यवर्तिताः । तेषां ते पादनीयाः प्रभुपदपञ्चपादजाः । जनापरिस्मिर्भवति यत्तं कोशस्थं नृपति । उदाहृतं वाणिज्यादिमोक्षदत्तं सुता द्विजे । वरपदेनैर्कर्मकराः क्षितिपत्रश्च वतादिनः । मत्स्यावाधं नराः पूर्वं स्पष्टिकाररताः क्षिणः । उन्ने मत्स्या मार्गः स्तुष्टपा मुषा रजस्वलाः । कस्यजाताः प्रहृष्टानि भ्रातृभार्यासम्भृत्याम् । अनेन कर्मणा नैते वापश्चित्तुमार्जकाः ॥ बृह. १. 10. १०. १० (except जनाप ... नृपति and last half), अथ. नि. p. 16 (except first verse and a half), मदनमाला (folio 3a except half verse कस्यजाताः), स्मृतिस्तु. (वर्णोद्भव p. 130), सुकर्मोक्ति IV. 3. 48-52, अथ. मधुख p. 7 (except the half verse कस्य &c. and mentions नराः सर्वे as v. 1.), अथ. 2. p. 22. कस्य represents the Khakha tribe in the Vitastā valley. एते च बृहस्पतिनाः । अमर्तुनामात्राभार्यासंभृत्यां चानिहृषितम् । कुले कथामयानं च देशेनभ्येदु द्रष्टे ॥ इदं दत्तं on आप. ५. II. 10. 27. 3 (Bühler's ed.).

Kāt.¹⁶⁷² defines what is meant by the customs of countries and families and states how and when they are to be enforced: 'That is said to be the custom of a country, which is in vogue in a country, is of long standing and is not opposed to the Veda and Smṛti. That is called family custom which has come down hereditarily in a family as right conduct (dharma) to be observed (by members of that family); the king should preserve it as it is. In disputes between the residents of the same country or capital, hamlet of cowherds, town or village the decision should be based on their own conventional usages, but in disputes between inhabitants of these and others the decision must be in accordance with the sacred texts. Therefore the king should decide the causes of people according to the rules of sāstra: but in the absence of texts he should carry out (the administration of justice) according to the usage of the country. Whatever conventions are settled in accordance with the consent of (the people of a) country should always be preserved in writing sealed with the royal seal. Such conventions should be sedulously upheld as if they were the dictates of sāstra and the king should decide (disputes) after carefully considering them.' Here Kāt. is principally concerned with the decision of legal disputes on the basis of the customs of countries and families, but his rules also have a general application. He also states that in the case of the conflict of laws by which the parties are governed sāstra prevails. Pītāmaha¹⁶⁷³ has a similar verse about the usages of towns, villages and guilds and mentions that Br. held the same view. Manu also (VIII. 3) requires the king to decide the disputes of people according to principles drawn from local customs (*deśadr̥ṣṭa hetu*) and from the Institutes of law (*sāstradr̥ṣṭa*). Medhātithi (on Manu VIII. 3) gives some interesting illustrations of local customs; viz. in certain southern localities a sonless widow

1672. परम देशस्य यो धर्मः पृथक् सार्वाकालिकः । सुविस्मृत्यपरिधेयं देशदृष्टः स
उच्यते ॥ गोशरिषातिष्ठ या तेषां जनादावापि धर्मतः । कुलधर्मो तु न पाहुः पाटयेन तथैव तु ॥
देशरचनलोष्ठेषु दूरस्थानेषु वासिनाम् । तेषां स्वमतवैधर्मशास्त्रोन्नेषु तैः सह ॥ तस्माच्छास्त्रा-
कारेण राजा कार्याणि साधयेत् । वाक्यानां तु सर्वेषां देशदृष्टेन संनयेत् ॥ देशरवात्तुमतेनैव
अवस्था या निरुपिता । लिखिता तु सदा धर्मा सुदिना राजदृष्टया । शास्त्रव्याप्तयो रहिता तां
निरिदं विनिर्णयेत् । कात्या. q. by सूत्रिच. II. p. 26 (all except the verse तो-
स्थितिस्तु), परा. मा. III. 41 (has first, 3rd and 4th), अपरा. p. 599 (has the
fourth), स्व. प. pp. 21-22 (has 3rd and 4th), स्व. नि. pp. 15-16 (has the
first two).

1673. ब्रह्मगोष्ठ्युपस्थितिमाधेयानिवासिनाम् । अपवादश्चरिषेण निर्णयः सुह-
रुदिः । विलास्य q. by सूत्रिच. II. p. 26.

occupies a square low table in the hall of justice, when she is struck with dice by the judicial officers and then she gets her husband's property (this is a reminiscence of Nirukta III. 5 explaining Rg. I. 35. 7), in the north there is a custom that when certain persons come on behalf of a bridegroom seeking for a virgin in marriage and they are fed at the house of the girl's father then it is implied that there is a promise to give that girl in marriage to that particular bridegroom. These two customs are not opposed to any *śruti* or *smṛti* (and even the V. P. p. 10 refers to the second as prevalent in the north and Madhyadeśa). But Medhatithi mentions other local usages that are opposed to *smṛti* e. g. grain is lent in spring and in the autumn of the same year double of it is taken. This is opposed to the rules of *smṛti* laying down rates of interest.

Very difficult questions arise in regard to the relative force of *śruti*, *smṛti* and *sadācāra* and numerous rules have been laid down in cases of apparent and real conflicts among them. As Manu II. 6, Vas. I. 4-5 and Yaj. I. 7 mention the sources of dharma to be *śruti*, *smṛti* and *sadācāra* in that order, the Mitakṣarā remarks¹⁶⁷⁴ that 'in case of conflict, each preceding one of those three has more force (or binding character) than each succeeding one.' *Śruti* or Veda is recognised by all *smṛti* writers as the highest or supreme authority for those who desire to know what dharma¹⁶⁷⁵ is (vide Manu II. 13 and Yaj. I. 40). If two vedic texts of equal authority are in conflict, then Gaut¹⁶⁷⁶ I. 5, Manu II. 14 and Jābali declare that there is an option. For example, there are two Vedic texts 'he takes the ṣoḍaśin cup in the Atirātra sacrifice' and 'he does not take the ṣoḍaśin cup in the Atirātra'. In this case there is an option. Similarly Vedic texts say that the daily Vedic agnihotra may be performed after sunrise, or before sunrise or when neither the sun nor stars are visible. Therefore there is an option, viz. the daily agnihotra offering may be made at any one of the three times specified (Manu II. 15). But a vedic text which is in apparent conflict with another is not always of equal force with that other. In such a case there is no option, and various rules are laid

1674. एतेषां विरोधे पूर्वपूर्वेषु बलीयस्त्वम् । निवृत्तः ०१ वा. I. 7.

1675. धर्मं जिज्ञासमानानां प्रमाणं परमं सुतिः । मनु. II. 13. धर्मं ... उपरमं सुतिः । द्वितीयं तु स्वशास्त्राणि तृतीयं लोकसंभवः ॥ बृहदारण्यक XIV. p. 599; vide वा. I. 40.

1676. तुल्यबलविरोधे विकल्पः । मी. I. 5; सुविद्वेषं तु यत्र स्वात्मनः परमार्थमौ स्मृतौ ॥ रघुविद्वेषं तु विषयः कालमीयाः पुत्रस्तु पुत्रस्तु ॥ जामलि q. by ॥ सुविच. II. p. 496. The first half of Jābali's verse is the same as Manu II. 14.

down in the *Pūrvamīmāṃsā* some important ones among which will be discussed at length in the section on *Pūrvamīmāṃsā*. Such texts may be explained by holding that one lays down a general rule (*sāmānya*), while the other lays down a special rule (*viśeṣa*) or an exception, or that one is a *vidhi* and the other merely an *arthavāda* or that the two texts have different scopes or refer to different ages &c. All these rules about the interpretation of Vedic texts have been held to apply to *smṛti* passages. For example, *Manu* VIII. 381 is a general rule absolutely prohibiting the killing of a *brāhmaṇa*. While *Manu* VIII. 350 allowing the killing of a *brāhmaṇa* in self-defence is a special rule or may be regarded as a mere *arthavāda* (viz. even a guru who is really not to be killed on any account may be killed when he is an *ātātāyin*, what of others, as the *Mit.* on *Yāj.* II. 21 explains). Similarly *Manu* VIII. 351 saying that there is no fault (i.e. no sin, no punishment and no *prāyaścitta*) in slaying an *ātātāyin* has restricted scope as applying only to an *ātātāyin* who is not a *brāhmaṇa*. A few more examples will be given immediately below.

In cases of conflict between *śruti* and *smṛti*, the rules laid down by the *Pūrvamīmāṃsā* have already been explained (pp. 832-34). *Jaimini* VI. 1. 13-14 and *Sābara* furnish an example. If, relying on *Manu* VIII. 416, the *pūrvapakṣa* were to argue that women own no wealth and so should not engage in a vedic sacrifice then as that *smṛti* so interpreted is opposed to the Veda it may be discarded by women¹⁶⁷⁷. *Smṛtis* also lay down certain general rules on that point. *Laugākṣi*¹⁶⁷⁸ and *Jābala* lay down that in case of contradiction between *śruti* and *smṛti*, the former has greater force and that if there is no contradiction then what is laid down in the *smṛti* should be observed as if it were laid down by the Veda. The *Mit.* on *Yāj.* III. 46 admits that a proposition of the Veda cannot be set aside (*bādhta*) by even a special proposition in a *smṛti* text. But in spite of the general proposition commentators like *Viśvarūpa*, *Medhatithi* and *Vijñāneśvara*

1677. *कालोत्साहाविशेषात्* । जै. VI. 1. 13 ; यदि स्मृतिमनुवर्त्तमाना पशवः निर्धना च स्यात्, पक्षेतेषुके सति न पक्षेत् । तत्र स्मृत्या क्षतिर्वाप्येत । न चैतन्मार्गवत् । तस्मात्कलाधिनी सती स्मृतिमप्यापीकृत्य इत्थं परिच्छिन्नापाद्यतेति चेति । शबर.

1678. क्षतिस्मृतिविरोधे तु स्मृतिरेव बरीयसी । अविरोधे सदा कार्यं स्मार्तं वेदिक-पक्षदा । लौगाक्षि व. by हरदत्त on यौ. I. 5 and स्मृतिच. I. p. 7. भाट्टतारक p. 191 ; मित्रमिश्र in his commentary on यौ. II. 21 reads (without naming the writer) क्षति ... बरीयसी । परस्परविरोधे तु योग्यमुक्तं (v. l. स्यापयुक्तं) प्रमाणवत् । The अधिकरणकौमुदी of देवनाथ reads परस्पर ... स्यापयुक्तं प्रमाणवत्.

had to admit that what was laid down by *śruti* texts was set aside or contradicted or abandoned by *smṛti* texts or by popular sentiment. After the Udayaniyā (concluding *istī*) in the Agni-
stoma sacrifice was finished, a rite was prescribed by Vedic texts in which a barren cow (called *Anūbandhyā*) was sacrificed for *Mitra* and *Varuṇa*. But later on this was condemned and in lieu of a cow *Amṛksā* (mixture of heated milk and curds) was substituted. Vide H. D. II. pp. 1200-1201 for the *anūbandhyā* cow and p. 628 n. 1198 above for the verse quoted by the *Mit.* on *Yaj.* II. 117 condemning cow sacrifice in Kaliyuga. *Yaj.* III. 234 puts *govadhā* (slaughter of a cow) at the head of *upapātakaś*. *Medhātithi* on *Mamu* IV. 176 after stating that even such acts as donating all one's property in the *Viśvajit* sacrifice or killing a cow should not be done (though sanctioned by the *Veda*) remarks that he gives that explanation following his predecessors' views but that to him it appears that an express *śruti* text cannot be set aside by a *smṛti* passage¹⁶⁷⁹. *Viśvarūpa* also (on pp. 25-26) after adverting to the fact that *Yaj.* III. 234 places *govadhā* at the head of *Upapātakaś* remarks that this may apply to the killing of cows spoken of in *smṛtis* such as at the time of *samāvartana* (vide *Mamu* III. 3) and that the rule must be upheld that a *smṛti* that is in conflict with an express text of the *Veda* is to be set aside. Sometimes even a *smṛti* text though theoretically weaker than *śruti* was allowed to prevail over a *śruti*. For example, the *Veda* prescribes the filling of the cups of wine in *Sautrāmanī istī*, but this is one of the matters prohibited in *Kali*¹⁶⁸⁰ (vide chapter on *Kalivarjyas* below).

The general rule is that when a custom or usage is opposed to the text of the *Veda* the latter must prevail. So early a writer as *Āpastamba* states this rule emphatically in several places. In *Āp. Dh. S. I. 1. 4. 8* it is stated¹⁶⁸¹: 'For, an explicit *śruti* text has greater force than *śāstra* (usage) from which a *śruti* text (on which it may be supposed to be based)

1679. न हि मय्यज्ञानविहितस्य स्मृत्या वायो व्यादपः । मेधा. on मनु. IV. 176; तेन वेदविद्वद्वाया स्मृतेर्वाथ इति निधतिः । विन्दरूप p. 26 on वा. I. 7.

1680. कश्चिद् दुर्बलवापि बलवतो वापः । यथा-सौमनस्यो सुराग्रहात् पृथ्वीमि मय्यज्ञानेनैव कलौ तुमे विमान धर्मान् वर्याणादुमेनीविणः—इति स्मृत्या । अन्वयानर्थक्या-वन्ते । परिभाषायकाश p. 27.

1681. सुतिवि बलीयस्यातुमानिवाद्याचारत् । आप. ध. सू. I. 1. 4. 8; विप्रतिषेधे सुति-लक्षणं बलीयः । आप. I. 11. 30. 9; वेतिद्यद्व्यानां तु वेदाः समागमिति निष्ठा । तत्र यानि श्रुयन्ते त्रीणि तत्रैव व्याख्यातव्याः कपालपानीसम्बन्धादुपवेनीचेः कार्यमिति तैर्विद्वद्वा आचारोऽप-मानमिति सम्पन्ने । आप. ध. सू. II. 9. 23. 9.

may be inferred.* In I. 11. 30. 8-9 Āp. Dh. S. says, 'during the morning and evening twilights a śnātaka should be seated outside the village and should restrain his speech (should not speak about worldly matters); but (an agnihotrin must not go out for) what is enjoined by ṛuti is of more force in case of conflict of duties'. Similarly in Āp. II. 9. 23. 8-9, 'It is the settled view of those who are deeply learned in the three Vedas that they are (highest) authority. They consider that the rites which are there prescribed for performance with rice, *yava*, animals, clarified butter, milk, potsherds (in conjunction) with the wife and accompanied by loudly or inaudibly recited (mantras) must be performed and that a usage opposed to these rites is without authority'. In spite of this and the doctrine of the *Pūrvamīmāṃsā* stated above (p. 843) usages sprang up that were opposed to or gave the go-by to the prescriptions of the Veda as will appear a little below and particularly in the section on *Kalivarjya*.

The conflict of *smṛtis* among themselves presents much greater difficulties. From very ancient times authors of *smṛtis* differed greatly among themselves. A few striking examples may be cited. Āp. Dh. S. (I. 6. 19. 2-12) cites the views of ten predecessors on the question of the persons whose food may be partaken of by a brāhmaṇa (*ke āśyānaḥ*). The difference between Gautama and Baudhāyana on the one hand and Āp. on the other on the question of the validity of certain usages in certain localities has already been referred to (p. 858). In III. 15 Manu mentions three views (and four sages) on the question of the position of a brāhmaṇa who marries a śūdra wife or has a son or a child from her. Baud. Dh. S. I. 8. 2, Manu III. 13, Viṣṇu Dh. S. 24. 1-4, Par. Gr. I. 4, Vaa. I. 25 show that brāhmaṇas were allowed to have śūdra women as wives. But Yāj. I. 56 emphatically dissents from this by stating 'this is not my view'. In this state of affairs the medieval digests and commentators were hard put to it to evolve rules of interpretation. One rule early evolved was that when two *smṛti* texts were in conflict, 'reasoning based on the practices of elders (*śiṣyas*) was of greater force' (Yāj. II. 31)¹⁶³². The *Mit.* explains that *ratiocinna-*

1632. स्मृत्योर्विरोधे न्यायस्तु यत्नवान् मय्यहास्तः । पा. II. 21, on which the *vy. n.* p. 13 remarks 'न्यायास्तुपदस्य स्मृत्यपेक्षया न्यायोपस्थाः स्मृतिर्वैलक्ष्यीति न्यायास्तुपदस्य स्मृतेस्तापयोग्यरूपतया कार्येति । तस्य चोत्तरापर्याय-विषयापवस्था-विकल्पविरूपस्य

tion may take the form of holding that one text lays down a general rule and the other lays down a special rule (which prevails over a general rule), or the text may be held to relate to different sets of circumstances or in the last resort it may be held that there is an option, but in arriving at these conclusions the practice of the old or of sistas who follow the rule in one text and discard or avoid the rule in the other text is the guide.¹⁶⁸³ Br.¹⁶⁸⁴ gives the following warning to those who do not take reasoning into consideration: 'The decision (in a cause) should not be given by merely relying on śāstras, for in the case of a decision devoid of reasoning loss of dharma results'. Nār. (I. 40) provides in a strain similar to the Mīl., 'when there is conflict between two texts of dharmasāstra, it is declared that the method to adopt is to resort to reasoning, for the practices (of sistas) are of great force and the strict letter of the law is overruled by them (or properly understood through them)'. These provisions remind us of the working of the principle of *equitas* applied by the praetors in Rome to the rigid older legislation or the influence of Equity in English Law. When

(Continued from the last page)

स्वायस्य प्रमापके हेतुनाह स्वयंकारत इति । बुद्ध्यावधारणादुपपत्तिरेकादिकयादनादि-
स्तुल्यपरपर्यायान्वायाः तर्कस्य इत्यर्थः । विचित्र्य reads स्तुतेर्विरोधे and gives three
interpretations of this: One is the same as that of the Mīl. The other two
are; (2) when there is a conflict between smṛti and reasoning, smṛti
is stronger (he approves of this); (3) in case of conflict nyāya is stronger than
smṛti. निबन्धने in his commentary on च. II. 21 explains स्वयंकारत differently
as 'स्वयंकारतः स्वयंकारे विषये'.

1683. In *Bhanu v. Sundrabai* P. J. for 1874 p. 250, where the question was whether daughters were excluded from inheritance as regards the Upat family of priests at the temple of Vithoba at Pandharpur), Yāj. II. 21 was translated (at p. 252) as follows: 'if two texts be opposed *usage* is of force for their construction'. In *Chunital v. Surajram* 33 Bom. 433 at p. 439 Yāj. II. 21 is rendered as 'where there is a conflict between two or more smṛtis that one should be accepted, which is conformable to equity'. The former rendering is rather obscure and the latter does not translate Yāj. closely. The exact meaning of 'equity' in this translation is not clear. It certainly does not mean 'equity' in the strict sense of English Law.

1684. स्वायमनालोचयते सोदनाह बुद्धयतिः । केवलं शास्त्रमात्रस्य न कार्यं हि निर्णयः । युक्तिहीने विचारं तु धर्महानिः प्रजायते ॥ स्प. मनुष्य p. 7. The verse is q. by परा. मा. III. p. 39, स्प. मा. p. 282, स्मृतिच. II. p. 24, स्प. य. p. 13 ; धर्मशास्त्रविरोधे तु युक्तिपुक्तौ मिथिः स्मृतः । स्वयंकारो हि बलवान् धर्मस्तेनावर्णीयते ॥ नारद I. 40. युक्ति means लोकस्यचक्षुर acc. to स्प. मा. p. 282. The स्वयंकारतम् (p. 199) says, धर्मशास्त्र-
योस्तु विरोधे लोकस्यचक्षुर एवचक्षणीयः । ... अर्थायते अप्रमथते हि मातानिवरणाद्वातोः ।

old rules become too narrow or are deemed to be not in harmony with the views of a changing or progressive society, it was thought to be the privilege of the king or the judge to adopt his practice to the existing state of society and not to decide a case by a too strict adherence to ancient dicta.

Another rule that was laid down was that in case of conflict between dharmaśāstra and arthaśāstra, the former is of more weight or authority or that one should discard the rule in the arthaśāstra¹⁶⁸⁵ (Āp. Dh. S. I. 9. 24. 23; Yaj. II. 21; Nar. I. 39; Kāt. 20). Vide pp. 8-9 above for an explanation of this rule. The rule of the arthaśāstra has the accomplishment of a visible or worldly purpose as the goal, while the dharmaśāstra rule has as its purpose the securing of unseen or spiritual results. Therefore the latter from a spiritual or ethical point of view is superior to the former.

Several other methods of resolving conflicts between smṛtis may be mentioned here. Br.¹⁶⁸⁶ states: 'Manusmṛti occupies a pre-eminent position because it puts together the purport of the Vedas; that smṛti which is in conflict with the purport of Manu is not commended'. Angiras also states that to follow the words (of another smṛti) disregarding the unrivalled dharmaśāstra of Manu would not be beneficial to a person. The Mit. on Yaj. III. 300 speaks of the Manusmṛti and others as the great smṛtis (mahā-smṛti). Some writers¹⁶⁸⁷ quote the Vedic text 'whatever Manu said is indeed medicine' in this connection, thereby identifying the author of the Manusmṛti with the Manu named in the Vedas. But this does not afford much help. Another principle evolved was that certain rules of conduct and certain smṛtis were of special authority in certain cycles of time. Manu (I. 85-86 = Śānti 232. 27-28 = Parāśara I. 22-23

1685. दध विपतिपतिः स्वाद्धर्मशास्त्रार्थशास्त्रयोः । अर्थशास्त्रोक्तमुच्यते धर्मशास्त्रोक्तमाचरेत् ॥ नारदः I. 39; मेधा. on मनु. VII, 1 says 'तथा च कारपावनः । अर्थशास्त्रोक्तं ... शास्त्रोक्तमाचरेत्' ?.

1686. वेदार्थोपनिषद् (सूत्राः) व्याख्यातव्यं हि मनोः स्मृतम् । मन्वर्थविपरीता तु वा स्मृतिः सा न द्रव्यते ॥ तावत्पञ्चाश्रमि शोभन्ते तर्कस्याकरणात् ॥ च । धर्मार्थमोक्षोपदेष्टा मनुष्याः पक्ष दृश्यते ॥ बृह. ५. by कुल्लुक on मनु. I. 1. The first is q. by अपराजित p. 628 and by स्मृतिच. I. p. 7 (reads वेदाहुपनिषद्वात) ; पद्मनाभिराः । यत्पूर्वं मनुना योक्तं धर्मशास्त्रमनुचरम् । न हि तस्मैतिकम्प्य दधानं हितमात्मनः ॥ स्मृतिच. I. p. 7, स्मृतिशु. (वर्णाश्रम) p. 6.

1687. अतिरिचि यद्दे किं च मनुवदुक्तज्ञेयम् । स्मृतिशु. (वर्णाश्रम) p. 6. This text is in नै. सं. II. 2. 10. 2 and Kābhaka XI. 5 has almost the same words.

= Bṛhat-Parāśara I. p. 55) himself says that the dharmas differ according to which of the four yugas is current, viz. *tapas* is the highest dharma in the Kṛta age, knowledge in Tretā, *yajña* in Dvāpara and only *dāna* in Kali. This verse only means that in a particular yuga the predominant or easily performed dharma is the one indicated but the verse does not mean that a dharma predominant in one yuga was prohibited in another. Parāśara I. 24¹⁶⁸⁸ (= Bṛhat-Parāśara I. p. 55) declares that in the Kṛta age the dharmas (to be observed) were those promulgated by Manu, in Tretā those of Gautama, in Dvāpara those of Śaṅkha-Likhita and in Kali those of Parāśara. This also did not solve all difficulties, since the medieval digests and commentaries found that even what was allowed by Parāśara came to be disapproved of or condemned by the people. Many prescriptions of the smṛtis were therefore included under *Kalī-narīya* (acts forbidden in the Kali age) on the ground that action, though at one time prescribed or sanctioned by the śāstra, should not be resorted to, if it has become hateful to the people, since it would not lead to heaven¹⁶⁸⁹ (if persisted in). This was the dictum of Yāj. I. 156 (= Bṛhan-Nāradya-purāṇa 24. 12), Manu IV. 176, Viṣṇu Dh. 8, (71. 84-85), the Viṣṇupurāṇa (III. 11. 7), Śukra III. 64, Bārhaspatya-sūtra (on Arthashastra) V. 16. Vide p. 630 and n. 1202 above. These texts were relied upon for prohibiting certain acts (though done in former times) by the Mī. (on Yāj. II. 117, III. 18), V. P. (p. 442) and others. But these devices of interpretation also proved futile in certain cases. On the question of the periods of mourning due to death for ksatriyas and others the texts are so various and so conflicting that even the great Viṣṇuśvara declares (on Yāj. III. 22) that he is not going to furnish any orderly presentation of the smṛti texts assigning to each its proper province, since it would be useless to do so in view of the fact that the usage of śāstras did not agree with most of them¹⁶⁹⁰. Viṣvarūpa also (on Yāj. III. 30) is in the same predicament. The commentators (such as

1688. कृते तु मानवो धर्मोऽस्मात्तु यौतमः स्मृतः । इदमेव जाह्नवलिखितः कलौ पराशरः स्मृतः ॥ पराशर I. 24 q. by स्मृतिच. I. p. 11. This is ascribed to बृह. in the आचाररत्न p. 12 quoting from the परा. मा.

1689. परितोऽपि दुर्धर्मा धर्मोऽस्मात्तु यौतमः स्मृतः । धर्मोऽपि दुर्धर्मा लोकविद्विषमेव च ॥ विष्णुपुराण III. 11. 7; धर्मोऽपि लोकविद्विषमेव न कुर्वन् लोकविद्विषमेव भाष्येत् । वाग्भट्टाय-धृष V. 16.

1690. इत्येवमेवोऽप्युक्तोऽस्मात्तु यौतमः स्मृतः । तेषां लोके सेमाचारानामप्युक्तं न च-परधापुर्धर्मोऽप्युक्तं न च परधापुर्धर्मोऽप्युक्तं । मिला. on यāj. III. 22.

Mādhava in Par. M. on I. 1. p. 84) were aware that people would not go in for religious practices that called for great effort and would seek for such rules as would be easy of observance.¹⁶⁹¹

In some cases it was provided that where there is a conflict among smṛtis the view of the majority should prevail. Gobhila-smṛti (III. 148-149) provides¹⁶⁹² that where there is a conflict among passages (of smṛtis), authoritativeness rests with that view which is supported by a majority of the texts, but where two passages are of equal authority then reasoning has to be employed. The assumption or axiom was, according to Medhātithi¹⁶⁹³ (on Manu II. 29 and XI. 216), Mīl. (on III. 325), Sm. C. (I. p. 5), Aparārka p. 1053, Madanaparijata (pp. 11, 91) and others that all smṛtis form one śāstra, that if some smṛti texts on the same subject are in conflict there is an option and when there is no conflict all rules from all smṛtis should be held applicable to the subject matter; this was based on the analogy of the maxim called 'sarva-śākhāpratyanyāya' or 'śākhāntarādhikarṇa' (vide Jai. II. 4. 9 and Śābara thereon).

It is further provided that works of heretical sects were to be left out of consideration, Manu calls them smṛtis, but they are outside the pale of Vedic orthodoxy. Manu (XII. 95) declared,¹⁶⁹⁴ 'the smṛtis that are outside the (pale of) Veda and all false or fallacious doctrines are of no avail after death, because they are all based on ignorance'. In the Vedāntasūtra (II. 1. 1) also the word smṛti is applied to the works on the

1691. अतः कस्यो यागिनो यथासंस्थे धर्मे सुवचसम्भवत् सुकरो धर्मोऽयं ब्रह्मसिद्धिः । परा. भा. I. part. 1 p. 84.

1692. अल्पानां यो विद्वान् स्वात्त वाधो बहुभिः स्मृतः । पाणसंमित (पाण ?) इत्यादि वसिष्ठे वाधिते यथा । विरोधो यत्र वाक्यानां नामार्थं तत्र प्रवसान् । सुवचसायकले तु स्याद्य एवं (एव ?) प्रकीर्तितः । गोभिलस्मृति III. 148-149. पाणसंमितो वैश्वस्य (ऽ वसिष्ठ XI. 57 (about the length of the staff of a vaiśya brāhmacārin). The verse विरोधो यत्र is quoted (without name) in मलमासतत्त्व p. 767.

1693. यथा सर्वशास्त्रावप्यपेक्षं धर्मं एवं सर्वस्मृतिरप्यवश्यमिति । यत्तु बहुलाहृष्टास्मृतीनां काश्चिद्वतामिप्यनव्यवसायः । सर्वासां नामाण्याविशिष्टावेकार्थानां विकल्पः भिन्नार्थानां समुच्चयः । मेधा. on मनु II. 29; एकशास्त्रत्वात्सर्वस्मृतीनामसति विरोधे सम्यं योज्यं विरोधे तु विकल्पः । मेधा. on मनु XI. 216; एवमप्येवमपि विरोधिपदार्थेषु विकल्प आश्रयणीयः । अनिरोधिषु समुच्चयः । शास्त्रान्तराधिकरणन्यायेन सर्वस्मृतिरप्यवस्थाकर्मणः । मिता. on पा. III. 325.

1694. या वेद्युपाध्याः स्मृतयो याश्च काश्च कुदृष्टयः । सर्वाणि निष्कलाः केच तमो-
निष्ठा हि ताः स्मृताः । मनु XII. 95. This is quoted by the तन्त्रवार्तिक on जै. I. 3. 5 p. 196 with the remark 'तद्वदीया ग्रन्था एव च मन्वादिभिः परिहार्यत्वेनोक्ताः । या वेद्युपाध्याः...तमोनिष्ठा हि ताः स्मृताः इति । तस्माद्धर्मं यति चर्चायाश्चमेव जातीयकं नामाण्येमा-
नकेत्येव स्वादिति सिद्धम् ।'

Sāṅkhya philosophy. The *Tantravārtika* (p. 195) says that the Bauddhas and other heretical sects do not admit that their doctrines are based on the Veda, like a bad son hating his parents; the prescriptions contained in their works are opposed to all the 14 *vidyās* except in the case of a few sentences laying down restraint of senses, charity and the like; they were promulgated by persons like the Buddha who had given up the path of the Veda and did acts contrary to the Veda and they were propounded to persons that were beyond the pale of the three Vedas and that mostly were śūdras and persons outside the system of the four varṇas and āśramas. Medhātithi on Manu II. 6 adopts this and remarks¹⁶⁹⁵ that the Śākyas, Bhojakas and Kṣāpanakas do not admit the Veda as authoritative, they openly declare the Veda to be unauthoritative and they teach doctrines directly opposed to the Veda. The *Caturvīṃśatīnātā*¹⁶⁹⁶ states that the words of Arhat (Jīna), of Cārvāka and of Bauddhas, should be abandoned as they lead to delusion.

Then comes the question of the conflict between *smṛti* and *purāṇas*. It has been shown in the H. of Dh., vol. I pp. 160-167, how the *Purāṇas* are rich in *Dharmaśāstra* material. The *sūtras* and early *smṛtis* do not look upon the *Purāṇas* as a source of dharma, though Gaut. XI. 19 and Yāj. I. 3 mention *Purāṇa* as one of the classes of works on which the king or any one else may draw for knowledge of dharma and though the Āp. Dh. 8. quotes from a *Purāṇa* in I. 6. 19. 13, I. 10. 29. 8 and II. 9. 23. 3 and names a *Bhaviṣyatpurāṇa* in II. 9. 24. 6. It is to be noted that the views quoted by Āp. from the *Purāṇas* in the first three passages are opposed to the views of the *Kalivarjya* section alleged to be taken from the *Ādityapurāṇa* in medieval digests. The passage of the *Tantravārtika* stating that *Purāṇas*, *Manusmṛti* and *Itihāsa* are universally accepted throughout India has been already quoted (on p. 853). When Manu states that *smṛti* is a source of dharma he does not obviously comprehend *Purāṇas* under *smṛti* as Manu II. 10 clearly shows (*dharmaśāstram tu vai smṛtiḥ*). Manu III. 232 and Yāj. III. 189 employ the plural '*Purāṇāni*' and so those *smṛtis* obviously

1695. नहि शाक्यनीलकण्ठपणकादीनां वेदसंयोगसंभवो येन तस्मैल्लज्जा स्तविष्यते
अनाज्ञे रघुः स्वयममरमुपमानस्यैव वेदस्याप्रामाण्यानिवातात् अप्रसङ्गेद्विषयार्थोपदेशाच्च ।
मेघ. on मनु II. 6.

1696. अर्हचार्याहाराख्यानि भौत्वादिपट्टिमानि च । निषदम्भकाख्यानि तानि सर्वानि
तज्जिह्वं चतुर्विंशतिमल (q. in स्मृतिमु., वर्णाश्रम, p. 7. स्मृतिच. I. p. 5).

knew several Purāṇas and Medhātithi notes that they were composed by Vyāsa and described the creation of the world &c. The Striparva (13, 2) also employs the plural and the Svargā-rohanikaparva (5, 46-47) speaks of Kṛṣṇa Dvaipāyana as the author of 18 Purāṇas. The Ādiparva¹⁶⁹⁷ (I, 293-34) prescribes that one should strengthen the Veda by (the study of) the Itihāsa and Purāṇa and that the Veda fears the man whose knowledge is insignificant 'this man will harm me'. According to the Bhāgavata-purāṇa I, 4, 25 the purpose¹⁶⁹⁸ of the composition of the Mahābhārata was this that as the Veda cannot be learnt by women, śūdras and brāhmaṇas who are so only by birth (and do not study) the sage Vyāsa took compassion on them and composed the Mahābhārata for their benefit. The same must be deemed to be the purpose of the composition of the purāṇas. The Dakṣasmṛti II, 69 prescribes¹⁶⁹⁹ the recitation of Itihāsa and purāṇa in the 6th and 7th parts of the day (divided into 8 parts). The Ausāṇasa smṛti (III, p. 515, Jivananda) prescribes the study of the Veda in the bright half of the montha from Māgha after *utsarjana* and the study of the Vedāṅgas and of Purāṇa in the dark half. It appears that some at least of the extant Purāṇas were composed in the first centuries of the Christian era and that from early times they contained dharmāśāstra material. In another section the *pauruṣadharma* will be separately dealt with hereafter. Gradually the Purāṇas became very popular in the course of centuries, some of the original rites prescribed by the Veda and the early smṛtis went out of vogue and new modes of worship and rites provided by the Purāṇas came into general observance. The Vedavyāsa smṛti¹⁷⁰⁰ (I, 4) and the Saṅgraha state that in case of conflict between smṛti and purāṇa smṛti is to be

1697. इतिहासपुराणां वेदं समुपबृंहयेत् । विभक्त्यनुवृत्तयेदो नामकं महस्विपति (v. I. महस्विपति) ॥ आदिपर्व 1. 293-294 (= इत्युक्तिं chap. 3 p. 30, Jivananda, = वायुपुराण I, 201, वसिष्ठ 27, 6). It is ascribed to बृहस्पति in the स्मृतिच. I, p. 5. लघुव्यास II, p. 320 (Jivananda) reads the first half as वेदांसमुपबृंहयेत्.

1698. श्रीकृष्णविरचयितुं शयी न क्षुतिगोचरा । इति भारतमाख्यानं कृपया मुनिना कृतम् ॥ भागवत I, 4, 25. तेनोक्तं सावते तत्रं यज्ज्ञात्वा सुक्तिभाग्यवेत् । यत्र श्रीकृष्णदासानां संस्कारो वैष्णवो मतः ॥ q. by the परिभाषावकाश (p. 24) from the भागवतपुराण.

1699. इतिहासपुराणां वैः षडसतमकी भवेत् । दश II, 69 q. by अपरांतं p. 157.

1700. स्मृतिस्मृतिपुराणां विरोधो यत्र दृश्यते । तत्र शीते ममाले स्यात् तयोर्विधे स्मृति-वेदा ॥ वेदव्यास I, 4. स्मृतिस्मृतिपुराणेषु विद्वद्भ्यो परस्परम् । पूर्वं पूर्वं यदीयः स्यादिति न्यायविदो विदुः ॥ संघट्ट q. by स्मृतिच. (वर्णाश्रम) p. 7.

preferred. Aparārka (p. 9) quotes¹⁷⁰¹ a *smṛti* text, 'that is highest dharma which is understood from the Veda, that is to be known as inferior dharma that is declared in the *Purāṇas* and the like'. Aparārka (p. 15) further tells us that¹⁷⁰² according to the *Bhaviṣyatpurāṇa* the *purāṇas* are of authority in declaring dharma that is *vyūmiṣṭra* (i. e. mixed up and not purely Vedic). Medieval writers were often divided as to the authoritativeness of *purāṇas*. Mitrāmīśra (in his commentary¹⁷⁰³ on Yāj. II. 21) asserts that *dharmaśāstra* (viz. *smṛti*) is not more authoritative than *purāṇa* and that in case of conflict between a *smṛti* text and a *purāṇa* text recourse must be had to reasoning as in the case of conflict between two *smṛtis*. On the other hand, the V. Mayūkha,¹⁷⁰⁴ after quoting Manu IX. 126 and Devala about the first born among twins being regarded as the oldest and after referring to a half verse from the *Bhāgavatapurāṇa* (rather from the commentary of Śrīdhara thereon) which holds that among twins the one born later is to be deemed as the elder, remarks that the *Purāṇa* passage is to be set aside in favour of the *smṛti* passages and that in the *purāṇas* usages opposed to the *smṛtis* are very frequently met with. It further says that this view is preferable to that of some others according to whom in this matter the custom of the country should be followed. The *Nirṇayasindhu* (III. p. 251) also says the same. The respect for the *purāṇas* carried away late medieval writers so far that relying on some prophetic passages in the *purāṇas* about the disappearance of four *varṇas* in the Kali age and the subsistence of only *brāhmaṇas* and *sūdras* therein, they denied the existence of *keśatriyas* and *vaiśyas* in the Kali age, in spite of the fact that all *smṛtis* (like Manu, Yāj., Parāśara) and many commentaries (including the *Mitākṣarā*) hold that the four *varṇas* exist in the Kali age.

1701. अतः स परतो धर्मो यो वेदादधिक्यमते । अतः स तु विज्ञेयो यः पुराणादिषु स्मृतः । व्यास q. by अपरार्क p. 9, परिभाषाव्यास p. 29, कृष्ण, p. 39.

1702. एवं प्रतिष्ठापानपि पुराणाद्युक्तैरेतिकर्तव्यता दाढ्या नास्या । तेषामेव स्थानिधधर्म-ममाश्रयेन भविष्यदुराणे परिज्ञातत्वात् । अपरार्क p. 15.

1703. तेन पुराणाद्यमंशसं स्मृत्यात्मकं न बलवत् । किं तु स्मृत्योऽपि स्मृतिपुराणयोः परस्परविरोधे स्थापान्नायकम् । मित्रमिश्र on वा. II. 21; एवं स्मृतिपुराणयोर्विरोधस्तत्र निरुध्यः । संस्कारसार folio 14 a (part of हस्तिनापुराण).

1704. यत्तु द्वौ तदा भवतो गर्भौ सुविनिर्दिष्टपर्यन्तात्—इत्यादिना मागवते पञ्चाज्वातस्य वैष्वक्पुत्रके तदप्यनेन बाधयो । पुराणेषु स्मृतिविरुद्धाचारार्थां बहुशो दर्शनात् । देसा-चारतोऽप्यत्रात्र ज्ञेयेति चेत्तत् । त्रुके तु पूर्वोक्तमेव । स्प. मयूख pp. 97-98. Vide राज-नीतिम्. pp. 37-39 for a similar view.

Vide H. of Dh. vol. II pp. 380-382 about the existence of ksatriyas in the Kali age.

The case of conflict between *smṛti* and customs has now to be considered. The general rule deduced from Vas. I. 5, Yāj. I. 7 and supported by the Mit. (on Yāj. I. 7 and II. 117), the Sm. C. (II. p. 366), Kullūka (on Manu. II. 10) and several others is that *smṛti* is of superior authority to the usages of the *śiṣṭas*. But from early times there have been dissenting voices. Viśvarūpa on Yāj. III. 250 states that that purport of the *smṛtis* is to be followed which is in accordance with the settled practice of the *śiṣṭas* resident in Āryāvarta¹⁷⁰³. On Manu IV. 176 Medhātithi points out that *niyoga* is permitted by such *smṛtis*¹⁷⁰⁶ as Gaut. 18. 4-14, Yāj. I. 68-69, Vas. 17. 56-65, but being condemned by the people it is not practised. Therefore the principle that may be deduced from these is that the prescriptions of *smṛtis* (and even of *śruti*) need not be observed and should not be observed when they are vehemently condemned by the people. The chapter on Kalivarjya will make this clear. Commentators like Medhātithi (on Manu II. 10) went so far as to say that Dharmakāstra is that which prescribes what is to be done for attaining dharma, that is *smṛti* from which dharma which one performs as a duty is understood and therefore *śiṣṭācāra*¹⁷⁰⁷ also is *smṛti*. The *smṛtis* themselves embodied the practices of the people current in their days, as Manu I. 107 declares, 'in this work dharma has been fully stated as well as the good and evil qualities of (human) actions and the ancient customs and usages of the four varṇas.'¹⁷⁰⁸ Manu adds (I. 108), 'ācāra (customs and usages) are transcendental law, and so are the practices declared in the Veda and the *smṛti*; therefore a twice-born person desirous of his own welfare should always

1703. लोकस्य सम्प्रदायाधिगमयेत्यस्मिन् नान्यत्र क्लेशनीयम् । यथैवाधार्मिकनिवासिनिश्चितं स्वव्यवहारविहिततथैव स्मृत्यधर्मादित्येव न तद्विपर्ययेण । निबन्धेण on वा. III. 250.

1706. इदं तु कुलतरुमुदाहरणम् । नियोगार्थः स्मृत्या विहितो लोकसंक्रान्तत्वात् किञ्चित् । मेधा. on मनु IV. 176.

1707. इह सम्प्रदायानां न स्मृतिर्न स्मृतिनिबन्धनाभावात् । निबन्धाकारा हि स्मृतयः समिद्धाः । अतस्तरुं स्मृतिरुपपादयति । यत्कार्यं धर्मभारपर्यये तज्जन्मशास्त्रम् । यत्र धर्मः शिष्यते कर्तव्यताया प्रतीयते सा स्मृतिः । निबन्धानिबन्धावयवयोश्चो शिष्यतमाचारादपि धर्मस्य कर्तव्यतावपि । सोपि स्मृतिरेव । मेधा. on मनु II. 10.

1708. अस्मिन्धर्मोपनिषितोक्तो ह्यनुदोषो न कर्मणाम् । चतुर्णामपि वर्णानामाचारश्चैव शास्त्राः । मनु I. 107, on which मेधा. says 'शास्त्रो ह्यनुदोषपरमः तेषामुपनिषितः ।'

make efforts to follow it'.¹⁷⁰⁹ This has been the basic text in modern decisions that recognize the binding nature of customs. It is therefore necessary to understand the exact meaning of this verse. Two constructions are possible; (1) that the word *ācāra* is qualified by the words 'śrutyukta' and 'smṛta' and that the first half declares that usages declared in the Veda or *smṛti* are transcendental law (this is the meaning given by most commentators of *Manu*); (2) that *ācāra* by itself and other rules of conduct declared in the *śruti* or *smṛti* are transcendental (i. e. here in the first half of the verse there is a reference to three kinds of *ācāras*, as Govindarāja and Nandana explain). If we look to the preceding verse and the following verses (that eulogise *ācāra*) the 2nd construction looks more natural and has been accepted by the decided cases when¹⁷¹⁰ they lay down that 'immemorial usage is transcendental law' (Sir William Jones' translation of *Manu* I. 108) and that "under the Hindu system of law clear proof of usage will outweigh the written text of the law". The *Anuśāsana* (141. 65) and *Śānti* 354. 6 expressly state that *dharma* is threefold viz. that declared in the Veda, that declared in the *smṛtis* and the third is what is practised by *śiṣṭas*. *Sumantu*¹⁷¹¹ emphatically declares that family usage should be preferred to the prescriptions of *sāstra*. The *Kūrmapurāṇa*¹⁷¹² (*Uttarārḍha* 15. 19) appears to support the 2nd interpretation when it says, 'one should observe that *ācāra* which is declared by the *śruti* and *smṛti* and which is rightly followed by the good'. The exact import of the word *ācāra* (or *sadācāra*) has been shifting from age to age and among commentators. In the earliest days, as shown by the *Tai. Up.*, *Gaut.* (28. 48, 51), *Baud. Dh.* S. I. 1. 4-9, *Manu* XII. 108-109,

1709. आचारः परमो धर्मः श्रुत्युक्तः स्मार्त एव च । तस्मादस्मिन् सदा युक्तो नित्यं स्थाप्यमानः हि ज्ञः ॥ *Manu* I. 108; 'च' श्रुत्युक्त आचारः बुद्धयसाधारण्यमाचार्यसमाधायनार्थं च धर्मोक्तः पञ्च स्मार्तः स परमः प्रकृतो धर्मः परमो ज्योतिषोमादिकादिभ्यः श्रौतस्मार्तधर्मैकः 'नोतिन्वराज', 'श्रुत्युक्तोऽग्निहोत्रादिनादिः स्मार्तोऽष्टकादिः । अस्मिन् त्रये 'मन्वन्, compare अनुशासन 141. 65 वेदोक्तः परमो धर्मः स्मृतिशास्त्रतोपरः । शिष्टाचार्यः परं लोकप्रियं धर्मोः सनातनाः ॥ and *शान्ति* 259. 3 सदाचारः स्मृतिर्वैदिकविधौ धर्मोऽङ्गणम् ।

1710. Vide *Collector of Madura v. Mootoo Ramlinga* 12 Moo. I. A. 397 at p. 436, *Bhyash Ram Singh v. Bhyash Ugur Singh* 13 Moo. I. A. 373 at p. 390.

1711. तस्मिन् कुलकृमागतमाचारं त्वाचरेद् बुधः । स गरीषान् महाबाहो सर्वशास्त्रो-
दितादपि । *सुमन्तु* p. by *स्मृति*. (वर्णाङ्गम) p. 7.

1712. सुविस्मृतादितः सम्प्रकृत्वापुनिर्यच्च सेवितः । समाचारं निवेदेत् वेदेतामप्य-
वादीचित् ॥ (*कूर्म*, उत्तरार्ध 15. 19).

Vas. I. 6, the *śāstra* to be followed was that observed or declared by learned brāhmanas who were highly moral and selfless (the *śiṣtas*). Medhātithi on Manu II. 6 states that binding *śāstra* is that of *śiṣtas* learned in the Vedas. Gradually every usage that had no visible secular purpose came to be looked upon as binding and lastly the usages of *śūdras*, of *pratiloma* castes and even of heterodox sects became, as will be shown in the sequel, enforceable by the king. As observed in 39 Mad. 298, 301 the commentaries indicate an attempt to reconcile the text law with the actual usages of the people.

The requisites of valid customs, according to the *smṛtis* and commentaries and digests, are similar to those laid down by the writers on *Pūrvamīmāṃsā* i. e. they must be ancient, must not be opposed to *śruti* and *smṛti*, must be such that they are regarded by respectable people as obligatory on them and such as are observed with that consciousness by the *śiṣtas*, they must be strictly construed and cannot be availed of by others not within their purview and must not be immoral or severely condemned by popular sentiment. Customs once in vogue may be abandoned by the people as the chapter on *Kalivarjya* will show.

From Gaut., Manu, Br., Kāt. and other writers quoted above it follows that the customs and usages of which account has to be taken are those of districts (*deśa* or *janapada*), towns and villages, castes, families, guilds or corporations or groups (*gana*, *śreni*, *saṅgha*, *maṅgama*, *varga*). A few words on each of these and on usages of *gotras* and *śūkhās* will be said later on and a few illustrations of each will be given. But first of all certain preliminary observations have to be made about customs in general. The medieval writers on *Dharmaśāstra* make it clear that customs that depart from the generally received *smṛti* prescriptions must be strictly construed and that they cannot be extended on the ground of analogy to other matters outside the specific acknowledged custom. For example, both the Sm. C. (I. 71) and the *Smṛtimuktāphala*¹⁷¹³ (on *Varnaśrama* p. 31) say that, though one's maternal uncle's daughter can be married (by custom) yet one's mother's sister or mother's sister's daughter

1713. अतो ब्राह्मणविनिर्वाहेषु निवृत्तकपिण्डनाशायां मातृसपिण्डत्वान्नातुल्यत्वा परि-
शेषा । एवं पैतृसपिण्डेऽपि । न च यथाविधा मातृसत्ता तदनुविता च किमिति न परिणयेति
वाच्यम् । शास्त्रातिरोधेऽपि लोकविरुद्धत्वाद्दुर्गममपि लोकविहितं तन्मातृहेतवम् । तदुक्तं मधुना
‘अस्मर्गः ... चरेत् तद् इति । स्मृतिम् । (वर्णाश्रम p. 131). Vide H. Dh. vol. II,
p. 467 n. 1096 for the passage of the Sm. C. almost in the same words.

cannot be married, because popular sentiment is opposed to the latter kind of marriages and popular sentiment has to be respected as Manu declares (in IV. 176). Similarly the *Saṁskāra-kaustubha*¹⁷¹⁴ and the *Dharmasindhu* provide that where there is a local or family usage for narrowing down the limits of sapinda relationship in marriage, only those who belong to that locality or family can avail themselves of such narrowing down, but if a person in a different locality or belonging to a different family were to follow the practice of narrowing down the sapinda relationship, he would incur blame. Owing to the vastness of *Bharatavarṣa* it was recognised that what was *sadācāra* in one country would not be so in another, as is noted by the *Par. M.* (I 2, p. 65) in relation to marriage with one's maternal uncle's daughter.¹⁷¹⁵

A few words may now be said about customs of countries. That usages about details of ritual varied a great deal even in the Vedic times is quite clear. The *Sat. Br.* (I. 1. 4. 13) notes that in former times it was the wife of the sacrificer that rose at the *Haviṣṭ* call, but that in its own day the wife or a priest (the *Āgnidhṛa*) rises in answer to the call. Vide H. of Dh. vol. II. p. 1027 and n. 2311 on the *Haviṣṭ* call. For similar differences in practices vide the same *Brāhmaṇa* XII. 3. 5, 1 and XII. 6. 1. 41. The *Alt. Br.* frequently refers to one view and refutes it by saying that one should not do so (*tat tathā na kuryāt*) or one should discard it (*tat tat nūdīṣyam*) e. g. vide chap. 12. 7, 17. 1, 18. 8, 28. 1, 29. 5. Vide also *Tai. Br.* I. 1. 8, I. 3. 1, III. 8. 8 for similar words. That different districts had different customs about marriages and other matters even before the times of the *gṛhyasūtras* and *dharmaśūtras* has been

1714. Vide H. of Dh. vol. II. p. 465 n. 1093d for the quotation from the *Dharmasindhu*. The *सं. कौ.* p. 613 remarks 'यस्तु देशानुसारेण कुलनार्षेण बोद्धव्यं । नित्यं स व्यवहारः स्यादेदं चैतन्मतांसे ॥ इति चतुर्विंशतिमतांश्च । तृतीयां मानुसः कर्मां तृतीयां विवृतस्तथा । विवाहवेगस्तु बाह्यप्राशर्षोऽङ्गिरा यमः ॥ इति चन्निष्कापारिजातोद्वाहस्तथाचिन्मतांश्च ।' and adds (p. 620) अतः सिद्धमेतत् । कदापि येषां कुले देशानुसारेण सावित्र्यसङ्कोचः परम्परया समागतः तेषां तादृशसङ्कोचेन न दोषः, अस्ति च भार्यालोचनः । अन्येषां तेः सह व्यवहारे नैव दोषः । स्वयं तु कुलदेशविषयसावित्र्यसङ्कोचेन विवाहे भवति दोषः । The two verses यस्तु देशः and तृतीयां are quoted by the *वेजयन्ती* on *विश्वधर्मसूत्र* 24. 10.

1715. यद्यपि मातुलमुतापरिणयनसङ्कीर्णशिक्षमर्थितं तथापि दाक्षिणात्यशिष्टाचारि तत्त्वेन नाविगीतोपसृष्टीप्यानामाचारः । न च दाक्षिणात्यानां रामभूलं सङ्कीर्णं विधिनिर्देश-परीक्षकैरेव सङ्ग्राहकरणात् । मातुलमुतापिवास्तु अविगीतेन शिक्षाचारेण गृहितः । *परा. म.* I. part 2 p. 65.

noted above (pp. 856-857). Baudhāyana made a distinction about the customs of the northern and southern people (countries). That customs of the northern and southern countries differed is emphasized by many commentators and writers of digests. For example, the *Mit.* on Yāj. I. 256 refers to the differing views of *dakṣiṇātyas* and *udīcyas* on *Ekoddista-śrāddha*. Śāṅkara-bhaṭṭa in the introductory verses of the *Dvaitanirṇaya* (or *Dharma-dvaita*-) expressly states that he will furnish solutions of knotty points in *Dharmasāstra* after abiding by the views of southern writers.¹⁷¹⁶ The *Nirṇayasindhu* in its section on *śāpīṇḍya* speaks of Śūlapāṇi, Vācaspati and Śuddhiviveka as Gaudas and Maithilas, and points out that Śūlapāṇi in the *Sambandha-viveka* and the *Sambandhatattva* (a Gauda work) allow marriage with a girl separated by three gotras from the bridegroom, while the southern writers (*dakṣiṇātyas*) do not accept the view. But in those days there were no rigid territorial boundaries for certain practices or doctrines. For example, Vijñāneśvara, Madana-ratna, Pārijāta, Vācaspati and Śūlapāṇi accepted the view that *śāpīṇḍya* arises from community of the particles of the body, while Aparārka, *Smṛticandrikā* and Mādhava (though they were southern writers like Vijñāneśvara) held that *śāpīṇḍya* was based on the offering of *pinda* in *śrāddhas*. The fashion of dividing Hindu works into schools and assigning them definite territorial limits started with Colebrooke and has been perpetuated by decisions of the Privy Council and of the Indian High courts. Vide *Collector of Madras v. Mootoo* 12 Mad. L.A. 397 at p. 432 (for reference to Colebrooke), p. 435 (as to how schools arose), pp. 436-437 (as to different schools). Strange results have flowed from this. The *Vyavahāramayūkha*, written by Nīlakanṭha, whose family belonged to Paithan in Mahārāṣṭra and migrated to Benares and who himself wrote under the patronage of a Bundella chief, came to be regarded as a work of the highest authority in Gujarat and North Konkan (even superseding the *Mitaksarā*), while in Mahārāṣṭra proper its authority is subordinate to that of the *Mitaksarā*. The *Mit.* (on Yāj. II. 119) avers that in the section on the partition of heritage the texts generally repeat what is

1716. मीमांसालक्षणाद्वैतसामान्यनिमित्तो नृपमाह्वयः । ... इत्येव चिरपरिचितकर्तृज्ञात्वा
ममानि तु । इति धर्मशास्त्रे निबन्धा धर्मवैतु निर्णयः । तद्वन्ते मीमांसालोचन नृपमाह्वयः कथंचन ॥
धर्मवैतु निर्णय Intro. verses 5-8.

already current among the people¹⁷¹⁷ and that if Yaj. II. 118-119 were interpreted to mean that the words 'what is acquired at the cost of paternal estate by a person himself' stand by themselves and do not qualify the other clauses, then what is acquired through friendship even at the cost of the paternal estate would not be liable to partition, which would be opposed to the practice among people. The Vyavahāra-mayūkha also¹⁷¹⁸ says on Manu IX. 210 (about reunion) that the law and administration of justice are generally based as is the case with grammar on people's usages. The Viramitrodaya also states that all writers of digests are agreed that smṛtis on Vyavahāra generally re-iterate recognized popular usages.

Customs of countries and families have been specially recognized from very ancient times in the sphere of marriage. The Āśv. gr. (I. 7. 1-2) has been already cited above (p. 856). The commentators on Āśv. gr., Haradatta and Nārāyaṇa, both mention that in certain countries sexual intercourse is commenced immediately after marriage, that this practice is opposed to the rule in Āśv. gr. I. 1. 10 that the married couple should be celibate after marriage for at least three nights (if not for a longer period) and that one should follow the rule laid down in the gṛhyaśūtra and not the usage of the country. The Āp. gr. (II. 15) remarks,¹⁷¹⁹ 'people should understand from women (and others) what procedure is (to be followed according to the custom of the country)' and the commentator Sudarśanācārya notes that certain rites like the worship of planets, *nikurāropana* and the tying of *pratisara* (a string or ribbon tied round the wrist) are usual and are performed with Vedic Mantras. The Kāthakagṛhya (25. 7) allows the usages of countries and families to be observed in marriage and the

1717. नञ्च मातरं प्रतिवेद्यः किन्तु सिद्धस्यानुवादोऽयम् । लोकसिद्धिरपिमात्राद-
कायेव यायेनास्तिप्रकरणे वचनादि । मित्ता, on या II. 119. Vide note 1091 above
about partition of what is obtained through friendship, यायेन व्यवहारस्तुतीनां
लोकसिद्ध्यार्थांस्तुवादशक्तमिते सकलनिबन्धुभिर्भिषातात् । अ. अ. p. 420.

1718. तेनाचारमूलकत्वेन वचसाः सम्भवति तद्विवक्षुल्लिखनमन्यथायम् । व्यव-
हारशास्त्रेण व्याकरणव्यायेनाचारमूलकत्वाच्चेति तु परे । अ. मयूख p. 146.

1719. आपृतश्चा स्त्रीः पतिवेत् । आप. गृ. II. 15 : सम्बरहिताः क्रियाः आपृत
उच्यन्ते । इत्युक्तं । आ स्त्रीः स्वर्गर्णेऽपि सकाशात् अवगम्य प्रतीयेत् कुर्वीत्य विवेकारः ।
तत्र सम्बरज्जा शङ्खुवाङ्कुशपणमलितरबन्धाया आचारसिद्धाः । अमन्त्रका नामधलि-
पक्षपदीन्द्राणीपूजादयः । ताश्च यथाजनपदं यथावर्णं यथाकुलं यथास्त्रीदुस्तं व्यवहिता एव ।
न तु सर्वाः सर्वत्र समुचितता । तात्पर्यदर्शनं.

commentators mention some usages, viz. Devapāla refers to stating the purpose of the visit, announcing the name of the maiden, worship of family deity, striking with flowers and creepers. The com. Brāhmanabala states that in Kashmīr at the time of marriage the mother-in-law or some other woman whose husband is alive ties an auspicious wreath on the heads of the bride and the bridegroom, that the mother-in-law places flowers on the feet, knees, shoulders and head of the bridegroom and on the same seven places of the bride's body flowers are placed but in the reverse order (i.e. first on the left limb and then on the right).

Haradatta on Gaut. XI. 20 (cited above in n. 1662) mentions the following usages: in the Cola country while the sun is in the zodiacal sign of Aries maidens draw with powders of various colours on the ground an orb of the sun together with attendants and offer worship in the morning and evening; on the full moon day of Mārgaśīrṣa maidens putting on ornaments walk about in the village and offer to a temple idol whatever they get in their wanderings; when the sun is in the sign of the Crab, maidens worship the goddess Umā while the moon is in the constellation of the Pūrva Phalgunis and offer to the gods *mudga* beans that have put forth sprouts and salt; when the sun is in the sign of Pisces, house-holders worship the Goddess of wealth while the moon is in the constellation of Uttara Phalguni. Āp. Dh. S. II. 6. 13. 7 notes that in certain countries the special portions of the eldest son in paternal wealth are gold, dark-coloured cattle and black-coloured produce of the soil (i.e. black grain). Vide Br. and Tantravārtika quoted above (as to customs of certain countries).

Several such illustrations may be furnished from other writers, but considerations of space make it necessary to omit reference to them.

The Pār. gr. S. I. 8 states¹⁷²⁰ that the usages of villages may be followed, since a text says 'one should enter a village (i.e. follow the opinion of village elders) in case of marriage and funeral rites' and since the Veda says that 'the village is the authority in these two.'

1720. शास्त्राचरे च कुर्वन्निष्ठाश्वसानयोद्यानि नविकादिनि वचनाचस्मादयोद्यानिः
वनामिति कुते । पार. दृ. सू. I. 8.

Numerous caste customs have been recognized from ancient times to these days. Gaut. XI. 20, Vaa. I. 17, Manu I. 118, VIII. 41 and 46, Kaṭṭ. III. 7, Śūkra IV. 5, 47 emphasize the validity of caste customs and call upon the king to enforce them. Yāj. I. 361 advises the king to punish those who swerve from the usages of their family, caste, guild, or group. Kātyāyana (40) enjoins¹⁷²¹ that the king should not disregard the fixed usages even of *pratiloma* castes and of the inhabitants of inaccessible places (mountain forts or habitations), even if they be opposed (to the rules of *smṛti*). In the *Paribhāṣā-prakāśa* Mitrāmśra holds¹⁷²² that the usages of good *sūdras* free from moral defects are binding on their sons and others even though they do not know the Veda.

Compared to Western Christian countries very great religious tolerance prevailed in ancient India. Vide H. of Dh. vol. II. pp. 388 (n. 928a), 723-724 for some remarks on this. Aśoka in his Pillar Edict VII (E. I. vol. II. p. 272) says that he looked after *śaṅghas*, *brāhmaṇas*, *Ājīvakas* and all other sects (*pāśanda*). The *Bhagavadgītā* (IX. 23-25) proclaims that the devotees that worship other gods do worship Kṛṣṇa himself though in an irregular way and that those who offer worship to the Manes or to the elements reach the goals they desire. The *Mānasollāsa* enjoins¹⁷²³ that one should give up condemnation of or hatred towards other gods, that one should show reverence on seeing an image or a temple and should not pass it over (in contempt). People of different countries no doubt twitted each other on the customs and usages peculiar to each; but, it rarely went beyond the bandying of words. For example, even such a

1721. *प्रतिलोमपक्षेण तथा दुर्गमवासिषु । निवर्जं निषत् पाहुतं धर्मं न विचारयेत् ॥* कात्या. q. by sv. d. p. 89. The sv. ni. p. 16 reads *प्रतिलोम्ये पक्षानां ... निवासिनाम् । वर्णानां निषत् धर्मं स्वाधीयेत न चालयेत् ॥* Acc. to the *Vyavahāra-Kalpātara*, *बृह.* read the verse as 'प्रतिलोमपक्षानां ... निवासिनाम् । शास्त्रवद् यत्नतो ह्यवा सन्निवृत्तौ साधनं तु सा' (quoted in 'Rājadharmā' p. 155 by Prof. K. V. Rangaswami Aiyangar).

1722. अधवा आचारश्चैव साधूनामिति, ज्येष्ठः । एवं चावेदविदामपि श्रीगणेशपुराण-नामाचारः प्रमाणम् । तथा च सच्छ्रद्धायाचारस्तत्तुवादीत्यपि भवति प्रमाणम् । परिभाषा-पत्रात् p. 9.

1723. अप्येषामपि देवानां निवृत्तां देवं च तज्जित् । देवं देवकुलं ब्रह्म नमस्कृत्यैव लक्षयेत् ॥ मानसोल्लास, verso 105 p. 11.

philosophical work as the *Jivānmuktivivēka* remarks¹⁷²⁴ that brāhmanas of the south condemn even the learned brāhmanas of the north as flesh-eaters and brāhmanas of the north condemn southern brāhmanas because they marry their maternal uncle's daughters and because they carry earthen vessels in fairs or on pilgrimages. It was on account of the general attitude of religious tolerance that the *śmṛtis* and digests prescribe that even the usages of heretical sects should be enforced by the king. *Yāj. II. 192* prescribes¹⁷²⁵ that the king should guard against breach of the distinctive usages and conventions of guilds (of artisans), of traders, of heretical sects and bands (of soldiers). *Nārada (samayasānapākarma 1-3)* states¹⁷²⁶ that the king should uphold the conventions of heretical sects, of traders, guilds and other groups and that whatever traditional usages, activities, mode of attendance and means of maintenance were peculiar to them should be permitted to them by the king without introducing any change. Among the matters of which the king was to take cognizance *suo motu* and included under *prakṛnaka* by *Nārada* (verse 2) was the transgression of the usages of heretics, traders, guilds and *ganas*. *Bṛhaspati* provides¹⁷²⁷ that in disputes among husbandmen, artisans, wrestlers, money-lenders, guilds, dancers, heretics, thieves, a decision is to be given in accordance with their conventions. It is no doubt true that certain *śmṛtis* present a sterner treatment of heretics and

1724. तद्यदि देशविशेषेण परस्परं निन्द्याबाहुल्यमुपलभ्यते । द्वाविंशतिर्यपि विरोधराशौ ।
वेदविदो विद्या नान्तरिक्षेणो निन्दन्ते । अक्षरादिश्च मातृलसुतोदादिनो पात्रास्तु ब्रह्माण्डवा-
दिनो द्वाविंशत्यावा निन्दन्ते । बहुवृथा आभ्युत्थानशार्थं काण्वशास्त्रायाः यशस्तो मन्थन्ते
वाजसनेयिनस्तु र्वपरीक्ष्येन । जीवन्मुक्तिविवेका (वासनाक्षयपरकण) p. 54.

1725. अथिनैवमपाण्डिगणानामन्यत्र विधिः । भेदं चैषां सुषो रक्षेत्पूर्ववृत्तिं च पात-
येत् ॥ य. II. 192 ; नैमगः ये वेदस्याप्तप्रणीतत्वेन प्रामाण्यमिच्छन्ति पाण्डुपतादयः । पाण्ड-
विज्जिनो ये वेदस्य प्रामाण्यमेव लेच्छन्ति नद्याः सौम्यादयः । ... एतेषां च ज्ञेयादीनां भेदं
धर्मव्यवस्थार्थं सुषो रक्षेत् । मिताः, the *टीपकालिका* explains 'नैमगो षणिपादिनामापीर-
समूहः । पाण्डवः प्रवृत्तवाचितः'. कात्यायन defines नैमग as 'मानापीरसमूहस्तु
नैमगारुहः प्रकीर्तितः' and the *तट्टिहमल* defines पाण्डव as 'प्रामाण्यमेव ये वेदे न
बद्धन्ति कुष्ठदयः । तेषां बौद्धार्हतादीनां पाण्डवारुपा प्रकीर्णते । प्रवृत्तवाचितो वे तु पाण्ड-
वारुपाः प्रकीर्तिताः' (q. by स्व. नि. p. 13); vide अवसर्क pp 171-72 for quotations
from *विष्णुधर्मोत्तर* and *विष्णुपुराण* about पाण्डिगण.

1726. पाण्डुर्नैमगादीनां स्थितिः सम्यक् उच्यते । पाण्डिनैमगश्चेति तूयव्रातमप्यादिषु ।
संरक्षेत्सम्यक् राजा दुर्यं जनपदे तथा । यो धर्मो कर्म पञ्चैषां सुपरिधानविधिश्च यः । पञ्चैषां
इत्युपादानमनुमते तत्तथा ॥ नारद (अनवरधानपाकर्म 1-3) q. by वि. र. p. 180.

1727. कीनाशा कावका मल्लः कुसीवुश्चेतिनाशिकाः । लिङ्गिनस्तस्कराश्चैव स्वेन धर्मेण
निर्णयः ॥ बृह. प. by स्व. मा. p. 281, स्व. नि. p. 11, स्व. प. p. 23 (which reads
कावकाः शिरिण्डुसीदिः).

the like. Gaut. IX. 17 provides¹⁷²⁸ that a *snātaka* should not talk with *mecchas*, impure persons and sinners. Manu IX. 225 prescribes that the king should banish from his capital gamblers, dancers, heretics, vintners &c. Manu IV. 30 holds that one should not honour as guests even by words persons who are heretics, rogues &c. and recommends that one should not reside in a country which is overrun by groups of heretics. Yāj. II. 70 and Nār. (nāḍāna 180) say that a heretic (*pākhaṇḍī*) or an atheist is not a proper witness. These passages may be explained in various ways. Probably the prescriptions of Gautama and Manu refer to an age when the schism caused by Buddhists and Jains was not very old and feelings between the followers of the Veda and the heretics ran high. But most of these prescriptions are addressed to the followers of the Veda as individuals. They do not negative the requirements laid down by Nār., Br. and others that the king (though of a different persuasion) was to enforce among heretics their own usages. It can be said without any fear of contradiction that at least from the 4th century A. D. onwards the policy of the State in India was 'to protect all religions, but to interfere with none'.¹⁷²⁹

Customs of families will be briefly referred to later on in connection with modern law cases. Among family customs the customs about the year when *caula* was performed and the locks of hair kept on the head in the *caula* ceremony are frequently mentioned in the *grihya sūtras* and other works. Vide H. of Dh. vol. II pp. 260 and 265.

The digests contain numerous examples about the customs and usages that were adhered to among the followers of the several Vedic branches (*śākhās*) and the *grihya sūtras* in performing several religious rites. A few examples may be set out here by way of illustration. According to Yāj. I. 342 the offering of *pinḍas* to the *pitṛs* in a *śrāddha* takes place after the *brāhmaṇas* invited at the *śrāddha* are fed, while Manu III. 261 shows that they were offered also before the *brāhmaṇas* were fed. The Sm. C. (on *śrāddha* p. 471) says that one should follow the practice of one's own Vedic *śākhā*. Among the five daily sacrifices (*mahūyajñās*) one is *pitṛyajña*, which acc. to some (such as Kātyāyana) means *tarpana*, while according to Manu

1728. न म्लेच्छाद्युच्यमानैः सह सम्भाषेत । मी. IX. 17.

1729. Vide *Visunder v. Vannaji* 3 Bom. 80 at p. 82 where Melvill J. states that this is the policy of the British Courts in modern India.

III. 81 it means *śrāddha* and the Sm. C. (I p. 208) provides that one should follow one's *śākha*. The same remark applies to the number of handfuls of water offered in *tarpaṇa* (Sm. C. I. p. 191 and *Madanspārijāta* p. 386). About the month of pregnancy in which the ceremony of *simantonnayana* was to be performed each person was to follow his own *grhyasūtra* (Sm. C. I. p. 17, and Par. M. I. part 2 p. 22). The same holds good as to the day of *nāmakarana* (Sm. C. I. p. 31, Par. M. I. part 2 p. 25). It is not necessary to multiply examples. According to Gaut. XI. 21-22 and others already cited above, the king has to enforce the usages of guilds (*śrenī*) and corporations. Several such usages have been cited above (pp. 487-488).

CHAPTER XXXIV

KALIVARJYA

(ACTIONS FORBIDDEN IN THE KALI AGE.)

It has been stated above (pp. 865-866) that one of the several ways in which the conflict between several *smṛti* texts was got over was to hold some of them as legislating for a bygone age (*yugāntara*). For example, when Hārita allowed upanayana to women, both the *Sm. C.* (I. 24) and *Par. M.* (I. 2. p. 83) hold that the text refers to another *kalpa* (aeon). In H. of Dh. vol. II (on pp. 151, 162, 424, 451, 603, 612, 620, 750, 790, 796, 928, 929, 934, 953, 1005 n, 1201 n) reference has been made to several matters forbidden in the Kali age. It is remarkable in this connection to note that, though the *Parāśarasmṛti* (in I. 24) claims *par excellence* to lay down the dharmas for the Kali age, several important provisions contained in it, viz. the remarriage of a married woman¹⁷³⁰ (*Parāśara* IV. 30), the variation in the period of impurity due to births and deaths depending on the learning and character of a brāhmaṇa (*Parāśara* III. 5-6), permission for a brāhmaṇa to partake of the food of five classes among śūdras (XI. 21) are included among Kalivarjyas by the *Ādityapurāṇa* (as quoted by writers of the 12th and later centuries). It is necessary, therefore, to investigate into the origin and development of the Yuga theory and of the topic of Kalivarjya.

From the *Mahābhārata* (*Śānti* 59), *Manu* (I. 81), *Nārada* (I. 1-2), *Bṛhaspati* and the *Purāṇas* it is clear that they all believed in the existence of an ideally perfect community in the dim past followed by gradual degeneracy and decline in morals, health and length of life. But they also believed that a cycle of decline would be followed in the far distant future

1730. Some of the printed editions of *Parāśara* (IV. 30) read नष्टे सुते ... पतिरप्येव न विधत्ते. But the *Par. M.* on it (vol. II part I p. 53) makes it clear that this reading was fabricated by orthodox people and that Mādhava at least read it as पतिरप्येव विधीयते, as he remarks 'अपे च हुनकदाहो युगान्तरविषयः'.

by another of moral perfection. The only pity is that all works that are extant think that they are in the midst of a very sinful age and there is not a single work which thinks that the era of perfection may dawn in the very near future.

The germ of the theory of progressive deterioration in morals is found even in the Rgveda. In the famous dialogue of Yama and Yami the former exclaims in one place¹⁷³¹ (Rg. X. 10. 10) 'those later ages are yet to come when sisters would do what is not sister-like'. The word 'yuga' occurs at least 33 times in the Rg., but the exact meaning is somewhat doubtful. In a few places it means 'yoke' (Rg. X. 60. 8, X. 101. 3 and 4). In several places it appears to stand for a very brief period of time (a. g. Rg. III. 26. 3). Generally it means 'a generation' (as in Rg. I. 92. 11, I. 103. 4, I. 124. 2, II. 2. 2, III. 33. 8, V. 52. 4). In Rg. I. 158. 6 'dirghatamā māmateyo jujurvān daśame yuge' *yuga* probably means 'a period of four or five years', while in Rg. VI. 15. 8, VI. 8. 5, X. 72. 2, X. 94. 12, X. 97. 1 it should mean¹⁷³² 'a long period of time'. In the Atharvaveda VIII. 2. 21 *yuga* appears to mean a period of several thousand years, two *yugas* being indicated as longer than 10000 years (*śatam teṣṣulam hāyanān dve yuge trīṇi catvāri kṛṇaḥ*). Here there is a clear reference to four *yugas* and to the fact that *yuga* meant a very long period of time. Whatever be the meaning of the word in each passage, the Rgveda does not contain the names of all the four well-known *yugas* viz. *Kṛta*, *Tretā*, *Dvāpara* and *Kali*. The word '*Kṛta*' when used in the Rgveda appears to mean 'the best throw of dice or of the seeds of *vibhitaka* in gambling' (X. 34. 6, X. 43. 5). In the Atharvaveda VII. 52. 2, 5, 6 *kṛta* has the same meaning. *Kali* is the name of the author of Rg. VIII. 66 and in verse 15

1731. अ वा ता वृष्टादुत्तरा युगानि यत्र जामया कृणवन्जामि। अ. X. 10. 10. The Nirukta (IV. 20) understood this verse in the sense given above 'आयमिष्यन्ति तानि उत्तरानि युगानि यत्र जामया करिष्यन्ति अजामिकर्माणि'. Rg. I. 113. 13 and III. 33. 8 make it clear that उत्तर must mean 'future'. श्वशुरोवा शुवास देवधी असेर्ध्वानो मयोनी। अथो वृष्टादुत्तरौ अद्यनवराभूता चरति स्वधानिः अ. I. 113. 13. Here the occurrence and sequence of दुरा, अद्य and उत्तराद् leave no doubt about the meaning of the last word.

1732. वा औषधीः पूर्वा जाता देवेभ्यस्त्रिषुर्ग दुरा। अ. X. 97. 1. Here what is meant by त्रिषुर्ग is doubtful. The Nirukta IX. 23 explains देवेभ्यस्त्रिषुर्ग युगानि दुरा, while सायण says कृताद्द्विषुर्गवत्. In the अथर्व VII. 2. 4. 26 त्रिषुर्ग means 'three seasons of spring, rains and autumn' (S. B. R. vol. 41 pp. 339-340),

of that hymn we read 'kalayo mā bhīhitāna' (O descendants of Kali! do not be afraid). In Rg. X. 39. 8 the Aśvins are said to have rejuvenated Kali who had become old. Vide also Rg. I. 113. 15 (where Kali is said to have got a wife from Aśvins). But Kali as a throw of dice does not occur in the Rgveda. In the Atharvaveda VII. 114. 1 Kali¹⁷³³ means a throw of dice. The words *kṛta*, *tretā*, *dyāpara* and *āskanula* occur in the Tai. S. IV. 3. 3, Vaj. S. 30. 18¹⁷³⁴ and in the Śat. Br. XIII. 6. 2. 9-10 (S. B. E. vol. 44 p. 416). In later literature Kali is also called *Tisya* (as in Bhīṣmaparva 10. 3). In the Tai. Br. III. 4. 16 the word Kali is used¹⁷³⁵ in place of *Āskanda*. In all the above places *Kṛta* and the other three words denote throws in gambling, *Kṛta* being the most lucky and *Kali* being the most unlucky. In another passage of the Tai. Br. (I. 5. 11) we read 'the four stomas (Trivṛt, Pañcadaśa, Saptadaśa and Ekaviṃśa) are *Kṛta* and the five are *Kali*; therefore the *catuṣṭoma* (should be performed in the *Jyotiṣṭoma*)'. This shows that *Kṛta* meant a throw of four or any multiple of four and *Kali* a throw which when divided by four left one as remainder. The Aitareya Br. employs the words *Kṛta*¹⁷³⁷ and the other three in a metaphorical sense as representing progressively more desirable states of human activity, 'one lying down becomes *Kali*, when about to leave the bed he becomes *Dyāpara*, when rising he becomes *Tretā*, and when he moves about he

1733. इदमुवाच बभूवे नमो यो अस्तेषु तनुवशी । पुनेन कलिं शिखामि स नो पृथगती-
हते ॥ अथर्व VII. 114. 1.

1734. 'अश्वराजाय कित्तं कृतायादिनवद्वीं वेतापे कल्पिनं द्वापरायाधिकल्पिनमाशक-
न्वाय सभास्थाण्डम् । वाज. स. 30. 18.

1735. कृताय सभापिनं वेताया आदिनवद्वीं द्वापराय बहिःसदं कल्पे सभास्थाण्डम् ।
तै. ब्रा. III. 4. 16. For आदिनव vide अथर्व VII. 114. 4 'आदिनवं पतिद्वीहने
पुनेनास्मै अभिहर'. सायण explains 'आदिनवद्वीं नर्चाद्यायो देवनव द्वापरं परीतकम्'.
The meanings of these technical expressions in gambling are extremely
uncertain.

1736. ये वै चत्वारः स्तोमाः कृतं तत् । अथ पञ्च कलिः सः । तस्माच्चतुष्टोमः ।
तै. ब्रा. I. 5. 11.

1737. कलिः श्रयानो भवति सखिदानस्तु द्वापरः । उत्तिष्ठेता भवति कृतं सम्पद्यते
चरत् । तै. ब्रा. 33. 3. The साङ्ख्यपनञ्जित (15. 19) reads कलिः श्रयानः दुःखः and
उत्तिष्ठेता भवति, मनु IX. 301-302 seem to be reminiscent of this verse
of the तै. ब्रा.

becomes *Kṛta*'. The Śat. Br. V. 4. 4. 6 speaks of *Kali*¹⁷³⁸ as 'abhibhū' (the vanquisher) and suggests that *Kali* is a throw of five that vanquishes all others. In the Chan. Up. IV. 1. 4 it is said 'as (in a game¹⁷³⁹ of dice) all the lower throws are included in the *Kṛta* throw which becomes victorious, so to him (to Raskya) comes (the merit of) all the good acts that people do'. Here Śāṅkara explains that *Kṛta* is a throw of dice having four marks, while other throws that have three, two or one mark are called *Tretā*, *Dvāpara* and *Kali* respectively. The Muṇḍaka Up. 1. 2. 1 refers to *Tretā*¹⁷⁴⁰. 'This is the truth; the sacrificial rites which the sages saw in the *mantras* (i.e. as prescribed in the hymns of the Rgveda and other vedas) have been performed in many ways in the *Tretā*'. This last word is explained by Śāṅkarācārya in two ways, first as referring to the threefold priestly duties (of hotṛ, adhvaryu and udgātṛ) which are based on the three Vedas and alternatively as referring to the *Tretā* age. From this resume it appears that even up to the times of the latest period of Vedic literature (i.e. Upaniṣads) the words *Kṛta*, *Tretā*, *Dvāpara* and *Kali* were used in the sense of throws of dice in gambling and that it is very doubtful whether they were used in the sense of different ages of the world. Even in the Mahābhārata *Kṛta*¹⁷⁴¹ and *Dvāpara* are used also in the sense of throws of dice (vide Virāṭa 50. 24). In the Gopātha Brāhmaṇa (1. 28) there is a reference to the beginning of the *Dvāpara* age.

Even in the Vedāṅga Jyotiṣa¹⁷⁴² (of Rg.) the word *yuga* is used in the sense of a period of five years (pañcasamvatsaramayam

1738. अध्यात्मै वज्राज्ञानावावापति । अभिपूरयेतास्ते वज्र दिशः कल्पन्तामित्येष ता अपानमिधूयन् कालिरेव हि सर्वानपानमिममपि तस्माद्वाहामिधूरसीति । शत. ब्रा. V. 4. 4. 6. It is impossible to say definitely how the game was played. Vide S. B. E. vol. 41 p. 106 for a note on the various explanations.

1739. यथा कृताविविजितावाधरेषाः संयन्तेवमेतं सर्वं तद्विभक्तयेति याज्ञिकः च यज्ञाः साधु कुर्वन्ति । शास्त्रोक्तं IV. 1. 4 and 6. Śāṅkara explains: यथा लोके कुवायः कुर्वन्त नामापी पुनस्तमेव वसिष्ठश्चतुरङ्गः स यज्ञा जपति यत्ते मनुजानां तस्मै विजिताय तद्वधमितरे विद्वेषेताङ्गा अधरेवास्तेषां प्रापकलितनामानः संयन्ति मनुष्यवृत्तेऽन्तर्भवन्ति । शास्त्रोक्तं IV. 3. 8 suggests that each die was marked in all with ten dots (4, 3, 2, 1) 'तस्मा उ ह यदुस्ते वा एते पञ्चान्ये वज्राण्ये वृक्ष सन्तस्तत्त्वजः'.

1740. तद्वैतसर्वं मन्त्रेषु कर्माणि कृतयो वाग्यपदपेक्षानि वेताप्यं बहुधा सन्ततानि । मुण्डकोप. 1. 2. 1.

1741. नास्तान् क्षिपति गान्धीवं न कुत इवापरं न च । विराट् 50. 24 (cr. ed. 45. 23).

1742. नायसुक्रमयस्य वीरकृष्णसमापिनः । उपरप पञ्चवर्षस्य कालज्ञानं यन्मन्त्रे ॥ verse 5 of वेदाङ्गज्योतिष.

yugādhyakṣam prajāpatim). The ancient *Pitāmahasiddhānta* which is not now extant, stated, according to the *Pañcasiddhāntikā* of *Varāhamihira* (XII 1), that *yuga* means five years of the Sun and the Moon (*raviśaśinḥ pañca yugam vareṇi Pitāmahopadiṣṭāni*). This sense of the word is still found in the *Sabhāparva* II. 38.

The *Nirukta* (I. 20) distinguishes between ancient sages and those of later days in the words,¹⁷⁴³ 'the (ancient) sages had an intuitive perception of *dharma* and they imparted the Vedic mantras by instruction to later (sages) who had no intuitive perception of *dharma*'. But it does not mention or refer to any theory of four yugas. Both *Gaut.* I. 3-4 and *Āp. Dh. S. II.* 6. 13. 7-9 give expression to the view that among sages of old transgressions of *dharma* and violent actions are observed, but that on account of their distinguished spiritual greatness they incurred no sin, while a person of later days, being weak in spiritual merit, should not imitate them, otherwise he would come to grief. Here a distinction is drawn between very ancient sages and later sages as regards the endowment of spiritual merit, but nothing is said about the names or the theory of the four yugas. *Āp. Dh. S. I.* 2. 5. 4 further says¹⁷⁴⁴ that sages are not born among men of later days (*avareṇu*) on account of the transgressions of religious ordinances (prevalent in later ages). Therefore, it would not be quite wrong to assume that the theory had not been fully developed even in the times of the early *dharmaśāstras* of *Gaut.* and *Āp.* even though both held that they were living in an age of decline and that sages coming after the authors of the *mantras* were inferior.

Here epigraphic evidence affords some help in fixing the lower limit of the period when the theory of yugas must have been developed.

In the Rock Edicts of *Aśoka* No. 4 and No. 5 we have at *Kalsi* and two other places the words '*āva kapam*' (*yāvat kalpam*) and at *Girnar* the words '*āva samvata kapa*' which mean 'up to the end of the kalpa' or 'up to the end of the kalpa when the clouds or fires of destruction called *samvarta*

1743. सत्त्वान्तरधर्माणं जगदो बहुस्तेऽसाञ्जान्तरधर्मस्य उपदेशेन मन्त्रान्मयाहुः ।
निरुक्त I, 20. Almost the same words occur in *वसवर्ष* 183, 67.

1744. तस्माद्बुधयोऽनरेषु न जायन्ते नियमातिक्रमात् । *आप. ध. सू.* I. 2. 5. 4.

will arise¹⁷⁴⁵. Vide C. I. I. vol. I. pp. 8, 10, 30-33. This indicates that the idea of a *kalpa* (a vast period of time at the end of which the universe would be dissolved) which is part of the theory of the yugas had been developed in the 3rd century B. C. The Junāgadh Inscription of Rudradāman¹⁷⁴⁶ (150 A. D.) refers to 'wind the velocity of which was as terrible as that at the end of the yuga'. In certain very early inscriptions of Pallava¹⁷⁴⁷ kings (of about the 3rd or 4th century A. D.) they are described as 'always ready to extricate dharma that had sunk deep owing to the evil effects of the Kali age'. In one of the Gupta Inscriptions dated in the 26th year of the Gupta era (415-16 A. D.) Dhruvasarman is praised as following the path of righteous conduct which prevailed in Kṛtayuga,¹⁷⁴⁸ while the Chammak copperplate of the Vākātaka emperor Pravara-sena II also speaks of Kṛtayuga (Gupta Inscriptions No. 55 p. 237 at p. 240). The Talgunda inscription of the early Kadamba king Kakusthavarman refers to Kaliyuga (E. I. vol. VIII p. 34). It is not necessary to adduce passages from inscriptions of a later date. From the above it may be said that the theory of yugas and kalpas had begun to take shape at least in the 4th or 3rd century B. C. and that in the first centuries of the Christian era it had been fully developed. It must have gone through several stages in the course of its development. For example, Brahmagupta (Brāhmasphuṭa-siddhānta XI 10) states that the theory of yugas, Manus and kalpas set out by Āryabhaṭa was not like that of the smṛtis.

The same conclusion is arrived at from a consideration of the classical Sanskrit literature. The theory of *yugas* and *manvantaras* as detailed in the Mahābhārata (Vanaparva chapters 149, 188, Śānti chapters 69, 231-232), Manu chap. I, Viṣṇu-dharma-sūtra XX. 1-21, the Purāṇas (such as Viṣṇu I. 3, VI. 3, Mārkaṇḍeya 46, Brahma 229-230, Matsya 142-144) and astronomical writers from Brahmagupta is briefly as follows: Kṛta, Tretā, Dvāpara and Kali comprise together with the period

1745. Compare: ततः संवर्तको बह्मिर्बाहुना सह भारतः लोकमाविशते पूर्वमादिशे-
दयशोवितम् । वनपर्व 188. 69.

1746. धुमनिधनसहस्रपरमपोरवेधेन बाहुना in E. I. vol. VIII p. 36 at p. 43.

1747. Vide कलिधुमदोषावसकधर्मोद्धरणनित्यसंज्ञकम्—which occurs as an epithet of Yavamahārāja Viṣṇugopavarman in I. A. vol. V. p. 50 at p. 51 and of Śinhavarman in the Pākira grant in E. I. vol. VIII p. 159 at p. 162.

1748. कर्तयुगाचारसङ्घर्षकर्मोद्योगिना ... ध्रुवसर्मणा in Gupta Inscription No. 10 pp. 44-45.

called *sandhyā* (that precedes each yuga) and the period called *sandhyāṁśa* (that follows each yuga) 12000 years, i. e. *Kṛta*, *Tretā*, *Dvāpara* and *Kali* extend respectively over 4000, 3000, 2000, 1000 years and *sandhyā* and *sandhyāṁśa* of these four extend over 400, 300, 200 and 100 years each (i. e. the *sandhyā* of *Kṛta* is 400 years and the *sandhyāṁśa* of *Kṛta* is 400 years and so on). But these are divine years. Each divine year is equal to 360 human years. Therefore we have to multiply 12000 by 360 to arrive at the number of human years in the four yugas (i. e. the figure is 4320000). The *Kṛtayuga* with its *sandhyā* and *sandhyāṁśa* comes to 1728000 human years, *Tretā* to 1296000, *Dvāpara* to 864000 and *Kali* to 432000. These four yugas are together called sometimes *caturyuga* (*Manu* I 71) or simply *yuga* also (*Vanaparva* 188. 27, *Śānti* 232. 29); 1000 of these four yugas constitute a day of *Brahmā*, which is called *Kalpa*. The night of *Brahmā* is of the same duration. At the end of a *kalpa* the universe is resolved into *Brahmā* (and this is called *pralaya*) and at the end of *Brahmā*'s night the world is created again. In one day of *Brahmā* there are 14 *Manus* and therefore each *Manvantara* is equal to about 71 *caturyugas* (1000 divided by 14). The life of *Brahmā* is 100, out of which half is gone and therefore the present is said to be the 2nd or latter half (*dhātīya parārtha*) of the life of *Brahmā* and at present the *kalpa* that is running is called *Vārāha*. From the above it will be seen that, according to the *Purāṇas*, the universe has been created and dissolved many times and there have been numerous *Manvantaras* also (vide *Manu* I 80). The four yugas in various ways differ in their characteristics. *Kṛta* is so called because it is an age in which everything is fulfilled by every one and nothing is left to be done.¹⁷⁴⁹ The symbolic colours of the four yugas are respectively white, yellow, red and dark (*Vanaparva* 189. 32). In *Kṛta*, *Dharma* prevails in all its perfection and it stands with all its four feet (*dharma* being figuratively spoken of as *vr̥ṣa*,¹⁷⁵⁰ a bull, in *Manu* VIII. 16 and *Vanaparva* 190. 9) and it declines or deteriorates by a quarter in each of the following yugas (*Manu* I. 81-82 = *Śānti* 232. 23-24), so that in *Kali* only one quarter (or one foot) of *dharma* remains and *adharma* occupies three quarters. In *Kṛta* people are entirely free from diseases, secure all that

1749. कुर्वन्नेव न कर्तव्यं तस्मिन् काले पुण्येन । वनपर्व 149. 11.

1750. कुत्ते चतुष्पादकलो विधार्जोपाधिरिति । इषा विहितो धर्मो मनुष्ये भरत-
र्द्धम ॥ वनपर्व 190. 9.

they desire and the length of human life is four hundred years, all of which decline by one quarter successively in the following three yugas (Manu I. 83 = Śānti 232. 25). The dharmas in each of the four yugas are different; *tapas* was the highest in *Kṛta*, philosophic knowledge in *Tretā*, sacrifice in *Dvāpara* and charity alone in *Kālī* (Manu I. 85-86 = Parāśara I. 22-23 = Śānti 232. 27-28). Manu I. 85, Śānti 232. 27 and 261. 8, Parāśara I. 22 all have the same verse stating that the dharmas prescribed for man in each yuga differ.

In *Kṛta*, *Tretā*, *Dvāpara* and *Kālī* the dharmas (that should be observed) are respectively declared by Manu, Gautama, Śāṅkha-Likhita and Parāśara (Parāśara I. 24). In *Kṛta* there was a single varṇa but at the end of *Kālī* almost all will be śūdras (Brahma 229. 52, Matsya 144. 78). Parāśara (I. 25-28) points out other characteristics of the four yugas, which need not be detailed here. Manu IX. 301 and 302, however, indicate that the yugas are not watertight parts of Time. It is the king who can by his conduct introduce the characteristics of one yuga into another. Medhatithi on Manu IX. 301 explains that the king should not be misled into thinking that *Kālī* is a historical part of Time and that he (the king) cannot therefore be *Kālī* or *Kṛta*, but that it is the king's way of conducting himself that will produce the conditions of the several yugas among his people.

In Vanaparva 149. 11-38, Vāyu 32 and 57-58, Līṅga 39, Matsya 142-144, Garuḍa 223, Nārada-purāṇa (pūrvārdha 41) and in several other purāṇas there are descriptions of the nature of the four yugas, which are passed over here. But it is important to see how the Great Epic and the Purāṇas describe the nature of *Kālīyuga*. Vanaparva chap. 188 and 190, the Yugas-purāṇa chapter of the Gargasaṃhitā (published in the J. B. O. R. S. vol. 14 pp. 400 ff by K. P. Jayaswal), Hari-vamśa (Bhaviṣya chap. 3.5 ff), the Brahma-purāṇa 229-230, Vāyu 58 and 99. 391-428, Matsya 144. 32-47, Kūrma I. 30, Viṣṇu VI. 1-2, Bhāgavata XII. 2, Brahmanḍa II. 31, Nāradya (Pūrvārdha 41, verses 21-88), Līṅga 40, Nṛsiṃha 54. 11-49 and several others present, often in identical verses, a very pessimistic, dismal and harrowing account of what will happen in the *Kālī* age. One extract¹⁷⁵¹ taken from the Vanaparva (188) is added at the end by way of sample, of which a summary is given below. All men will generally be liars; in

1751: Vide Appendix.

the Kali age substitutes will be invented for *yajñas*, gifts and *vratas*; *brāhmanas* will do actions prescribed as peculiar to *śūdras* and *śūdras* will be acquiring wealth (which is the peculiar privilege of *vaśīyas*) or they will maintain themselves by following the profession of arms; *brāhmanas* giving up the study of the Veda and the performance of sacrifices and devoid of the staff and deer skin will eat anything (i. e. will not observe rules about *bhaksyābhaksya*); *brāhmanas* will not engage in *japa* (muttering of Vedic mantras), while *śūdras* will be intent on *japa*; when the world will be turned topsy-turvy, it will be the first indication of coming destruction; many *mleccha* kings will rule over the earth, who will be sinful, will issue false edicts and will be engaged in fruitless wrangling; there will be *Āndhras*, *Śakas*, *Pulindas*, *Yavanas*, *Kambojas*, *Bāhlikas* (from Bakh) and valiant *Ābhras* (as rulers); no *brāhmana* will maintain himself by pursuing his own *dharma*; *ksatriyas* and *vaśīyas* will indulge in prohibited or bad activities; people will be short-lived, have little strength, their valour and prowess will be insignificant, their spirits will be low and their bodies diminutive and they will speak words that have very little truth; countries will be mostly untenanted and the spaces will be occupied by beasts and snakes; people will be engaged in dry discussions about *brahma* (they will have no realisation or experience of *brahma*), *śūdras* will employ the word 'bhoḥ' (in addressing others¹⁷⁵² of higher classes) and *brāhmanas* will employ the word *ārya* (in addressing peoples other than *brāhmanas*); swarms of insects will abound; all perfumes will not smell as fragrant as before and fluids will lose their sweet taste; women will have numerous progeny, will be of short stature, devoid of character and good conduct and engage in sexual intercourse against the order of nature; countries will suffer pangs of hunger¹⁷⁵³, squares where four

1752. This would be against the rules of *dharmaśāstras* and *śrūti* about *abhiwādana*. Vide H. of Dh. vol. II. pp. 336-339.

1753. Nilakantha notes that the verse अहमन्त्रं तदेव शूलं दुःखं येषां ते शूलं पवित्रं, शिवः सर्व-
दुःखमार्यनीपतया कल्पयन्वाच शूलः पण्डितो येषु ते शिवशूलः विद्वत्पण्डितानां, शिवो
पाणिपुण्ड्रकरोपि केशोपलभितं सोमार्थं लज्जामूलं शीतं शूलमिव दुःखं त्वार्थं च वामो
तः केशशूलः भवति विपत्त्यकलजाः. The *Shukamala* kar p. 244 quotes the verse
अहमन्त्रः and then remarks 'अस्मार्थमाह परशुरामः । अहमन्त्रं शिवो वेदः शूलं विकल्प एव
च । केशश्च भवति शिवो वेदस्तस्मादर्थशिवः ॥'

roads meet will be full of *nautch* girls, and women will give up their chastity; cows will yield little milk; trees will produce few flowers and fruits and will abound in crows; brāhmanas will receive gifts from kings that are guilty of brāhmana murder and that falsely accuse others of grave sins; people in the various spaces will be dunned for alms by brāhmanas steeped in greed and ignorance, who falsely make a pretence of their being religious; householders afraid of the burden of taxation, guilty of thieving and subsisting on trade, will remain concealed under the false garb of ascetics; brāhmanas pretending to be brahmacārins will, through greed of wealth, fraudulently allow their nails and hair to grow; persons in the various stages of life, that observe false rules of conduct but are drunkards and indulge in incest, will desire mundane objects and the increase of flesh and blood; the sāramas (forest dwellings) will be full of various heretical opinions and will extol the merits of food provided by others (out of charity); Indra will not send down rain at the proper season and all seeds will not put forth proper growth; people will take delight in killing and will be impure and abundant will be the fruit of adharma; whoever will then be acting according to his dharma may be regarded as having a short time to live, since there will be no dharma whatever (in Kaliyuga); people will sell goods mostly with false weights and measures and traders will be full of many tricks; the righteous will wither away, the sinful will prosper; dharma will lose its strength and adharma will be powerful; those who follow dharma will have short lives and will be poor, while those who give up dharma will have long lives and will be prosperous; in the sporting grounds of cities people will be sinful (or adulterous) and people will enter into transactions by sinful means; people, that have saved a little, will be puffed up with the pride of the rich; people with whom wealth was deposited privately through trust will mostly be ready to deny the deposit, shamelessly saying 'it was never so deposited;' the sporting grounds of towns and temples belonging to towns will be infested by beasts and birds that prey upon human beings; girls of seven or eight years will become pregnant and males of ten or twelve years old will have sons born to them; people will be bald-headed in the 16th year and there will be quick decline in the length of the lives of men; young men whose lives will be short will act like old people and old people will have the habits of the young; women acting contrary to their duty

will deceive worthy husbands, will be of bad character and will have intercourse with slaves and even beasts; wives of heroes will resort to other men and will be guilty of adultery even while their husbands are alive.¹⁷⁵⁴

The dates of the composition of the Purāṇas not being beyond controversy, it would be difficult to point to a particular period as the time when the full-fledged theory of the yugas was developed. But this much can be stated with certainty that by the 4th century A. D. at the latest the theory had been completely developed. Āryabhaṭa¹⁷⁵⁵ (in *Kalakriyāpāda* 10) states that when three *pādas* of the yuga (i. e. *Kṛta*, *Tretā* and *Dvāpara*) and 3600 years more had elapsed, he was 23 years old i. e. (accepting the calculations current at present) in 499 A. D. Āryabhaṭa was 23 years old and so was born in 476 A. D. In his *Pañcasiddhāntikā Varāhamihira*¹⁷⁵⁶ (505 to 587 A. D.) summarises the data of several astronomical

1754. It would be interesting to compare the descriptions of Kali given in the *Mahābhārata* and the several Purāṇas. Some verses are common to several of them and the ideas are almost the same throughout. The principal counts in the indictment are that there will be *śūdra* and *Mleccha* kings, that heretical sects will predominate, that the ordered duties and privileges of the several castes will be turned topsyturvy and there will be great physical and moral decline. After *Vanaparva* chap. 188 there is an additional description in chap. 190 of what will happen in the Kali age, which appears, from the express words of *Vanaparva* 191. 16, to have been taken from the *Vāyupurāṇa*. So this chapter is a later interpolation. The verse अङ्गुलं &c. occurs again in *Vanaparva* 190. 52 and also in *Harivaṃśa* (*Bhaviṣṣaparva* 3. 12), *Brahmapurāṇa* 230. 11, *Matsya* 47. 258. Two characteristic verses are: शुकदन्ता जिह्वाशब्दं शृणुः काषायवाससः । शूरा धर्मं यदि त्यजन्ति शत्रुहृद्दोषजीविनः ॥ (*वाङ्मुराय* 230. 13, *वायु* 58. 59, *ब्रह्माण्ड* II. 31. 59-60, *Harivaṃśa*, *Bhaviṣṣaparva* 3. 15) and देवराजानेषु चैवेदं नानागामाजयेदु च । मरुक्चिह्ना इषिरी न देवराजपिता ॥ *वनपर्व* 190. 67. The first says that *śūdras* with white teeth and (professing to have) curbed their senses, with the head shaved and wearing ochre-coloured robes and maintaining themselves on false doctrines will propound dharma. This is a direct attack on Buddhist monks taken from the class of *śūdras*. The 2nd says that the earth will be covered with skeletons enshrining bones (of Buddha) and not with temples of gods. The idea about girls of 5, 6 and 7 being mothers occurs in *Viṣṇupurāṇa* VI. 1. 41-42, *Brahma* 229. 41-42, *Nārada* *Pūrvaṛdha* 41. 64 and elsewhere.

1755. मध्वश्चन्द्राणां पटिषंदां स्मरति नवमं युगपादाः । उपरिक्ता निशितिरिषदास्तद्वै मनः जन्मनोत्थिताः ॥ *कादृक्षिपादा* 10. This does not necessarily mean that he composed this work when he was only 23.

1756. Vide J. A. S. B. for 1912 pp. 275-278 for the date of *Varāhamihira*.

Siddhāntas of which Romaka is one, about which Brahmagupta remarks that the Romaka siddhānta is outside the pale of smṛtis because¹⁷⁵³ it omits all mention of yugas, manvantaras and kalpas that have been regarded by the smṛtis as useful in measuring time. Kālidāsa¹⁷⁵⁴ in Raghuvamśa 15. 96 speaks of dharma as having only three feet (in Tretā) when Rāma made up his mind to depart from this world. No scholar will assign to Kālidāsa a date later than the middle of the 5th century A. D. Therefore the theory of yugas must be deemed to have been perfected long before 400 A. D. K. P. Jayaswal holds that the Yugapurāṇa chapter of the Garga-saṁhitā was composed about 50 B. C. (J. B. O. R. S. vol. 14 p. 399) and he is probably right.

At present it is the practice to hold Kali 5046 (expired) as equal to 1945 A. D. or śaka 1867 or *śamvat* 2001-2. But it appears that there were several views about the date of the beginning of the Kaliyuga. The exact starting point on the above computation was Friday, 18th February 3102 B. C. One view was that Kaliyuga was about to begin when the great Mahābhārata war was fought out.¹⁷⁵⁵ This view is expressed in the Aihole Inscription which appears to equate the beginning of Kali with the Bhārata war and states that 3735 years (expired) from the Bhārata war are equal to 556 years of the śaka era.¹⁷⁵⁶ Āryabhaṭa knew this computation, since he says that he was 23 years old when three parts of the (great) yuga and 3600 had elapsed (Kāla-kriyāpāda, verse 10). Another view set forth in the Purāṇas is that Kaliyuga began when Kṛṣṇa finished his *avatāra* and went to heaven.¹⁷⁵⁷ This would put the beginning

1753. पुनर्मन्वन्तरकल्पाः काटपरिच्छेदकाः स्मृत्युक्ताः । वरमात्र रोमके ते स्मृतिषाद्यौ रोमकस्त्वस्मात् ॥ ब्रह्मसफुरसिद्धान्त I 13 q. by S. B. Dikshīt (2nd ed. of 1931) in भारतीयवैदिकशास्त्र p. 153. ब्रह्मसूत्र flourished from 598 A. D. to at least 665 A. D.

1754. तस्मिन्नायमवतुर्भागे यादृग्नाकमधिरस्युषि । राघवः शिषिते तस्यौ सुवि धर्मक्षिपादिव ॥ रघुवंश 15. 96.

1755. अन्तरे चैव संभाते कलिद्रापरधोरभूत् । समन्तपञ्चके पुञ्जं कुरुपाण्डवसेनयोः ॥ आदि. 2. 13; भाते कलिपुर्णे विद्धि । शल्प 60. 25; एतत्कलियुगे नामाचिरात्कल्पतते त्वपर्यं 149. 38.

1756. विशत्सु विसत्सुषु भारताद्वादादितः । सप्तचतुशतयुकेषु मन्वन्तरेषु पञ्चसु ॥ पञ्चाशत्सु कलौ कलि वदसु पञ्चाशत्सु च । समासु समर्पितासु शकानामपि भूतुताम् ॥ E. I. vol. VI p. 1 at p. 7.

1757. यस्मिन्कृष्णो दिवं गतस्तस्मिन्नेव तदा दिने । यतिपञ्चः कलिपुनस्तस्य संज्ञा निषेधः ॥ शतु 99. 428-429, अष्टाष्ट III. 74. 241. The भाववत् XII. 2. 33 reads यतिपञ्चं कलिपुनमिति वाहुः पुराणिदः । मत्स्य 273. 49-50, विष्णु IV. 24. 40 respectively read यतिपञ्चं कलिपुनं यमायं तस्य मे शतु and यतिपञ्च...तस्य संकर्षा निषेध मे ॥ ब्रह्मपुराण 212. 8 has the same idea in different words.

of Kaliyuga several years after the date arrived at on the first view.¹⁷⁶² Vide *Mausalaparva* chap. 1. 13 and 2. 20 for reference to the lapse of 36 years before Kṛṣṇa's passing away. The *Yugapurāṇa* appears to make Kaliyuga start on the day Draupadī died (vide J. B. O. R. S. vol. 14 p. 400). Another view is that of Varāhamihira who says that the constellation of the Great Bear was in Mughā when Yudhiṣṭhira was on the throne and that that time is arrived at by adding 2526 years to the śaka year.¹⁷⁶³ This would place Yudhiṣṭhira in 653 of the Kali age (as calculated at present) and not at the end of Dvāpara and the beginning of Kali. The *Rājatarāṅgi* 1. 56 quotes the *Bṛhat-saṃhitā* and holds that Kurus and Pāṇavas flourished in 653 of the Kali yuga (1. 51). Great efforts have

1762. Vide J. R. A. S. for 1911 pp. 479ff and 675ff about the Kaliyuga and its era; 'Five thousand years ago, the Mahābhārata war' a paper by Dr. D. S. Trivedi in *Festschrift Kane* pp. 515-525 in which after setting out many divergent views and criticizing them, it is held that the Mahābhārata war was fought out in 3137 B.C.; 'Purāṇic date of Mahābhārata', a paper by Mr. M. Raja Rao in the *Bulletin of the Ganganatha Jha Research Society*, vol. II pp. 125-143, which mentions numerous dates suggested by various scholars. I am not at all convinced of the correctness of Dr. Trivedi's conclusions, in spite of the great learning that he brings to bear on the problem. Vide also his paper in '*Bhāratiya Vidyā*', vol. VI (1945) pp. 117-120.

1763. आसन्नं मया तु मुनयः शान्तिं पृथीं युधिष्ठिरे वृद्धो । वृद्धविरजद्विभुः स-
काशस्त्वयं राज्ञश्च ॥ वृद्धविरजः 13.3. This is not a verse of Garga as some scholars assert. In 13. 2 Varāhamihira promises that he will dilate on the movements of the seven sages (*ṛṣiṇīcāra*) according to the opinion of Vṛddhagarga. It appears that 13.3 is his own verse. Garga held the opinion that the Great Bear remained in one constellation for one hundred years. That is all. Utpalā quotes the verse of Garga, but it is in the Anuṣṭubh metre. It was believed by the authors of the Purāṇas and even by such astronomers as Varāhamihira that the constellation of the Great Bear remained in each *nakṣatra* for a hundred years. Vide *Bṛ. Sam.* 13.4, *Bhāgavata* XII. 2. 27-28, *Maitrya* 273. 40-44, *Vāyu* 99. 421-423, *Viṣṇu* IV. 24. 33. Mr. Velandi Gopal Aiyer in '*Chronology of Ancient India*' (p.75) holds that 'saṁ-dvika-pañca-dvi' means 26 times 35 i. e. 630 years and that we should read 'śakyakāla' or 'śakyakāla' (p. 73) instead of 'śakakāla' in *Bṛ. Sam.* 13. 3 in order to correct the error of one mātrā in the 4th quarter of the verse. In this last he is in error; he forgets that, according to works on *chandas-śāstra*, a short syllable at the end of a pāda is deemed to be prosodically long (and therefore the last syllable in *Bṛ. Sam.* 13. 3 is long). Besides, he is not able to cite a single example to show why the usual rule of अङ्गानां सामानो मातुः should not be followed here also or that Varāhamihira elsewhere employs a similar method in a compound word.

been made by several scholars to meet this discrepancy by explaining the word 'śat-dvika-pañca-dvīyutaḥ' (in the *Bṛhat-samhita*) in various fanciful ways, which are far from satisfactory. There is no reason why *dvika* should not straightforwardly be taken in the sense of 'two',¹⁷⁶⁴ as the *Lilāvati* and *Bṛ. Sam.* 71. 5 itself do.

It is difficult to believe that the *Śakakāla* referred to in that verse is different from the *Śakendrakāla* or *Śakbhūpakāla*, which the *Pañcasiddhāntikā* (1.8) and the *Bṛhat-samhita* (8. 20-21) make use of in several places. At least *Varāhamihira* gives no such indication. Mr. C. V. Vaidya in his '*Mahābhārata, a criticism*' pp. 80-81 holds that the *Śakakāla* referred to in the verse 'āsan maghāsu &c.' is the era of Buddha's Nirvāṇa. There is hardly any warrant for this assumption. His interpretation of 'śat-dvika-pañca-dvīyutaḥ' as meaning 2566 (and not 2526) is not bad and does not seriously affect the argument about the date of *Yudhiṣṭhira*. On that interpretation *Yudhiṣṭhira* would be placed in 2488 B. C. (instead of in 2448 B. C.). But there is no reason why the usual values of *sat* (six), *dvika* (two) and other words should not be understood to be meant here.

The data contained in the *Nidhanpur* plates of *Bhāskara-varman* (E. I. vol. XII p. 65), when properly scrutinized, appear to favour the position of *Varāhamihira*. Those plates in settling out the genealogy of *Bhāskara-varman* start with *Naraka*, whose son *Bhagadatta* fought on the side of the *Kauravas* in the *Mahābhārata* war and was killed by *Arjuna* (vide *Drona-parva* chap. 29). *Bhagadatta*'s son is said to have been *Vajradatta*. After *Vajradatta* his descendants ruled over *Kāmarūpa* for 3000 years and then *Puṣyavarman*, a scion of the *Bhagadatta* family, became king of *Kāmarūpa*. King *Bhāskara-varman* was 12th from *Puṣyavarman* and was a contemporary of Emperor *Harsa* (first half of the 7th century A. D.). Taking an average of 20 years for the reign of each ruler, *Puṣyavarman* should be taken as having flourished about the beginning of the 5th century A. D. Adding 3000 years which are alleged by the plates to have intervened between *Puṣyavarman* and *Vajradatta*, we arrive at about 2500 B. C. as the time of *Vajradatta* and therefore approximately of the *Mahābhārata* war. This

¹⁷⁶⁴ The *हैलाकली* (अष्टावक्रचरण, verse 262, Anandj. ed.) reads द्विकाद्विकान्तिनिपादकेन, where the com. says द्वानेन द्विकः.

corresponds rather very closely with the statement of Varāhamihira who puts Yudhisthira's reign at 653 Kaliyuga (i. e. 2448 B. C.). On the other hand, if we assume that the Mahābhārata war was fought in or that Kaliyuga started in 3101 B. C., then Puṣyavarman who flourished 3000 years after the Mahābhārata war would have to be placed about 101 B. C. and there will be an interval of about 700 or 750 years between Puṣyavarman and Bhaskaravarman. A period of 700 or 750 years for 12 rulers would work at about 60 years for each ruler, which is a very improbable average. Therefore the Nidhanpur plates do not support the hypothesis that the Mahābhārata war was fought about 3101 B. C., but rather support the statement of Varāhamihira that it was fought about 2500 B. C.

Another epoch for the Mahābhārata war and the beginning of Kaliyuga is indicated by some passages of historic importance found in some of the Purāṇas. The Vāyupurāṇa (99. 4-15) and the Matsyapurāṇa (273. 36) say that from the birth of Parikṣit to the coronation of Mahāpadma (Nanda) a period of 1050 years elapsed, while the Bhāgavata XII. 2. 26 assigns 1015 years for the same. There is some mistake in the Purāṇa texts here. The Matsya (in chap. 271. 17-30) enumerates the kings of the Bārhadratha dynasty of Magadha descended from Sahadeva, son of Jarāsandha, and states that the dynasty will rule (i. e. ruled) for a thousand years. Then chap. 272 (verses 1-5) speaks of five kings, who will be followed by the Śiśunāka dynasty, that together reigned for 360 years and the last king in which was Mahānandi (verses 6-13) whose son from a śūdra wife was Mahāpadma (272. 18). So if the years of these three dynasties are added we get the period of about 1500 years. This is supported by the Bhāgavatapurāṇa (IX. 22. 48 and XII. 1-2) and Vāyupurāṇa (99. 308-321), which latter says that 32 kings of the Bārhadratha dynasty will rule for 1000, then five Vitthotra kings for 138 years (Pradyota and others) and then the Śaiśunāka (Śiśunāga in the Bhāgavata and in the Brahmāṇḍapurāṇa III. 74. 134-135) dynasty for 362 (in all exactly 1500 years). The same periods are given by the Viṣṇupurāṇa (IV. 23 and 24) and by the Brahmāṇḍapurāṇa III. 74. 121-135. Śrīdhara in his comment on Bhāgavata XII. 2. 26 states that the interval between Parikṣit and Nanda is 1498 as the Bhāgavata holds that the Śaiśunāga dynasty ruled for 360 years (XII. 1. 4-6). Therefore the proper reading in the Vāyupurāṇa or Matsyapurāṇa or the Bhāgavata should be 'pañcaśatottaram'

instead of 'pañcāsaduttaram' or 'pañcadasottaram.' Taking the interval between Parikṣit and Nanda to be 1500 years and holding as most modern scholars do that the Nandas flourished in the 4th century B. C., Parikṣit, the grandson of Arjuna, the Mahābhārata war and the beginning of Kaliyuga would have to be placed in the 19th century B.C. Therefore there are so far three main different epochs for the Mahābhārata war viz 3101 B. C., 2448 B. C. and about 1900 B. C. All the three are well attested by evidence dating at least from about the 5th century A. D. One cannot dogmatically say that a certain tradition alone out of these three is the only correct one. All that one can say is that one prefers a particular tradition to the other two. Since the epoch of 1900 B. C. is supported by the Purāṇas in great detail by citing the names of the several kings and their regnal years I personally regard the epoch of 1900 B. C. for the Mahābhārata war as more probable than the other two. It is best to acknowledge one's inability to assign a certain date to the Mahābhārata war rather than twist plain words or ignore altogether inconvenient passages or put on them fanciful or far-fetched interpretations. The first desideratum is to prepare critical editions of the important purāṇas from the best mss. material. Even then it is doubtful whether unanimity among scholars can be secured. A scholarly beginning was made by Pargiter in his book 'The Purāṇa texts of the dynasties of the Kali Age' (1913). He compares the material available in the printed editions of several Purāṇas and Mss. on the subject of royal dynasties. One cannot or may not agree with many of the assumptions and inferences that he makes or draws, yet one cannot withhold admiration for his industry and method. For example, I cannot agree with him when he takes 'bhaviṣye kathitān' of the Matsyapurāṇa or 'bhaviṣye pathitān' of Vāyu (99, 267) as referring to the Bhaviṣyapurāṇa. In many passages of the Purāṇas we have references to 'bhaviṣyajña' (Brahmaṇḍa III. 74, 105), which simply means 'those who are conversant with sections on the future' contained in ancient works like the Mahābhārata.

It is not possible owing to limitations of space to enter into detailed examination of the theories of several scholars about the date of the Mahābhārata war. But one or two important matters will have to be referred to here.

Mr. Velandī Gopala Aiyer in 'The chronology of Ancient India' in chap. II. (pp. 51-104) examines the astronomical data

furnished by the Mahābhārata and relying on the far-fetched and wrong interpretation put by him on the words of the *Bṛhat-saṃhita* (quoted above) and on the fact that the Kollam era in Malabar appears to take 1177 B. C. as the starting point for Kaliyuga arrives at the conclusion that the Mahābhārata war took place in the latter part of 1194 B. C. This theory goes against all the three other starting points which are supported by comparatively ancient and authoritative evidence.

The information derived from the fragments of the work of Megasthenes on India are supposed to shed some light on this vexed problem. In one fragment (p. 115 of 'Ancient India as described by Megasthenes &c.') occurs the passage: 'From him (i. e. Bacchus) to Alexander the Great 6451 years are reckoned with three months additional, the calculation being made by counting the kings that reigned in the intermediate period to the number of 153'. An extract from Pliny makes out the number of kings to be 154. As against this we have the statement in the 'Indika' of Arrian (2nd century A. D., translated by McCrindle, p. 203): 'From the time of Dionysos to Sandrakottus, the Indians counted 153 kings and a period of 6042 years, but among these a republic was thrice established another to 300 years and another to 120 years. The Indians also tell us that Dionysos was earlier than Heracles by fifteen generations and that except him no one made a hostile invasion of India'. This passage is of very great importance for one reason, viz. that it proves that in the 4th century B. C. there was a persistent Indian tradition which carried back Indian civilization and ordered government to 6000 years before the 4th century B. C. But there is great doubt as to what Megasthenes actually wrote and there is some divergence as to the number of years and kings also. Besides, this has no direct bearing on the date of the Mahābhārata war or the beginning of Kaliyuga, unless Heracles is taken to be Hari-Kṛṣṇa, as some scholars¹⁷⁶⁵ do. The account of Heracles (pp. 201-203 of McCrindle's work) agrees in some respects with the legends about Kṛṣṇa viz. that he was honoured by the Sourasenoi (Śūrasenas), an Indian tribe who possess two large

1765. Vide Mr. C. V. Vaidya's 'Mahābhārata, a criticism' pp. 75-76, where ignoring the figures of total years (viz. 6042 or 6451) he comes to the conclusion that Kṛṣṇa flourished about 3101 a. c. since 138 Kings between Heracles and Sandrakottus (i. e. Candragupta) may have ruled in all about 2760 years, taking 20 years as the average for each reign.

cities Methora (*Mathurā*) and Cleisobora and that Heracles had many wives; but then there are other anecdotes about Heracles which do not at all agree viz. his having a daughter Pandala with whom when she was only seven Heracles had intercourse for raising a mighty race. Here there is some confusion with the Pāṇḍavas and Kuntī or with the Pandyan kingdom in the South. Moreover, 6000 years for 153 or 154 kings is rather a very long period. It cannot be said that a king is only a unit of time in these computations (40 years on an average), since such Purāṇas as the Vāyu and the Matsya expressly mention the number of years that each dynasty held sway, the number of kings belonging to each dynasty and the lengths of the reigns of several kings. It is no doubt true that the details of the names of the several kings, the number of kings and the duration of their reigns do not always tally. It appears that the Purāṇas that contain historical material were recast at different times, e. g. the Vāyupurāṇa (99, 383) refers to the Guptas while the Matsyapurāṇa is silent about them. The extant Purāṇas cannot be supposed to have given imaginary details about historical dynasties, but they must have had before them older records or traditions. The Purāṇas do not appear to have invented names of new kings or given imaginary lengths of reigns. The authors surely knew that the total of the several dynasties between Parīkṣit and Nanda did not square with the total of the lengths of the reigns of the several individual kings. But they gave both these without trying to solve the discrepancies as they wanted to record all the traditions they had got before them. The Purāṇas have a claim on our attention, but in the present state of our knowledge they cannot unfortunately form the basis of any certain or connected history and chronology of ancient times.

A few words may here be said about the attempts made to deduce the age of the Mahābhārata war from the astronomical references in the Epic.

The number of works and papers in which the dates of the Bhārata war and of Kaliyuga are discussed is very large. A few of them only are noted here. The late Shankar Balkrishna Dikshīt in his exhaustive volume on 'the History of Indian Astronomy' (in Marathi, 2nd ed. of 1931) deals with this subject at pp. 107-127. Mr. C.V. Vaidya in 'Mahābhārata, a criticism, 1904' devotes one chapter (pp. 55-78) and appendix note V (pp. 180-190) to the date of the Mahābhārata war. He holds fast to the traditional

view that the Mahābhārata war was fought in 3101 B. C. Mr. N. Jagannatha Rao writes a book on 'the Age of the Mahābhārata war' (Bezawada, 1931), in which he disputes the identity of Candragupta Maurya with Sandracottus mentioned by Megasthenes, holds that Sandracottus is the Gupta Emperor Candragupta, that the date of Candragupta Maurya would be about 1535 B. C., that the word 'Sakakāla' in the *Bṛhatsamhita* refers really to the era of the Persian Emperor Cyrus about 550 B. C. and that the Great War was fought in 3139 B. C. The work does not go deeply into anything and is rather superficial. There is a lengthy and interesting article by Mr. K. G. Sankar on 'some problems of Indian Chronology' in *Annals of the B. O. R. Institute, Poona*, vol. XII pp. 301-361 in which he seems to favour 1198 B. C. as the date of the Mahābhārata war. Mr. J. S. Karandikar, editor of the 'Kesari' (Poona), contributed certain articles (in Marathi) which are now issued as a booklet (1939), in which he examines many of the astronomical references in the Mahābhārata and the Paurānic lists about the dynasties of ancient Indian kings and arrives at the conclusion that the Mahābhārata war was fought in 1931 B. C. Though I differ from him in important details, I think that the date arrived at by him appears to be one of the two probable or best authenticated dates among the several dates proposed by various scholars. Prof. P. C. Sen-Gupta contributed a paper to the *Journal of the Bengal Asiatic Society* in 1937, vol. III pp. 101-119, in which he discusses the date of the Mahābhārata war and arrives at the conclusion that the Bhārata war was fought about 2449 B. C. This also is a very probable date and has the authority of the tradition mentioned in the *Bṛhatsamhita* that the saka era is 2526 years after the era of Yuddhiṣṭhira. In *J. A. S. B.* for 1938, vol. IV pp. 393-413 Prof. Sen-Gupta again examines 'Bhārata battle traditions' and confirms the date 2449 B. C. already arrived at by him. Dr. K. L. Daftari delivered some lectures in the University of Nagpur on 'the astronomical method and its application to the chronology of Ancient India' which are published in book form (Nagpur, 1942). This work exhaustively deals with almost all the passages of astronomical importance contained in the Mahābhārata and is characterized by great industry, patient calculations and ingenious explanations of conflicting passages. His conclusion is that the Bhārata war was fought in 1197 B. C. Although one feels nothing but admiration for the author's great learning and acumen, it is not possible to agree with the date arrived at by him or with

the method and theories adopted by him. Apart from details one cannot accede to the following theories propounded by him viz. his division of the astronomical references into two groups, his assumption that a passage in the Dronaparva (chap. 184) about the rising of the moon at about 2 A. M. is an interpolation (because it does not square with his explanations of the other passages), his bold expedient of changing 'citram' to 'caitam' in Bhīma 3. 12 and his transposition of Śravana and Pusya in Salyaparva 54. 6, his taking 'angāraka' to mean Venus (and not Mars). Dr. Daftari's work was reviewed by Prof. Sen-Gupta in JASB for 1943, vol. IX pp. 221-228 and after submitting it to a searching analysis and calculations, the learned Professor arrives at the conclusion that he cannot accept Dr. Daftari's method, which is useless for all practical purposes. Prof. K. V. Abhyankar contributes an article to the Annals of B. O. R. I. for 1944, vol. XXV, pp. 116-136 on 'the date and time of the Bhārata war', in which he takes into account only the material available in the Epic itself and bases his conclusions on the principle of following the voice of the majority. He furnishes a useful table in an appendix that shows at a glance some of the important astronomical passages of the Mahābhārata with their interpretations given by the commentators Arjunamiśra and Nilakanṭha and by Mr. Karandikar and himself and finally gives his opinion that the traditional view of the date (3101 B. C.) is approximately correct. It appears that he had not, when he wrote the article, the work of Dr. Daftari before him nor Prof. Sen-Gupta's devastating criticism of it. It will be apparent from the above that the attempts to settle the exact date of the Mahābhārata war on the strength of the astronomical materials contained therein are dismal failures. Hardly any two scholars agree on the exact dates so arrived at, which range from 1193 B. C. to 3101 B. C. and even beyond. There are many reasons for this disappointing result. In the first place, several of the criteria mentioned in the epic are hopelessly inconsistent, as will be made clear a little below by a few examples. Further, several scholars assume that the epic was composed within a short time (about three years according to Ādiparva, 62. 52, cr. ed. chap. 56. 32.) after the war. Many (including my humble self) cannot subscribe to this view. Besides, we are totally in the dark about the details of the system of the calendar generally adopted at the period of the war. Many suppose that it largely resembled the rules contained in the Vedāṅga Jyotiṣa (of the Rgveda). There is no unanimity on the question whether the months

ended with *amāvāsyā* (i. e. whether they were *amānta*) or whether they ended with Full Moon (i. e. whether they were *pūrṇimānta*).¹⁷⁶⁶ That a *pūrṇimānta* month was in vogue in Vedic times is beyond dispute. For example, Tai. S. states that Pūrva Phalguni is the last night of the year and Uttara Phalguni is the month (i. e. beginning). Similarly Tai. S. VII. 4. 8. 2 declares that the *citrāpūrṇamāsa* is the month of the year; while Śān. Br. IV. 4 declares that the Phalguni Paurṇamāsa is the *mukha* of the year. The author or authors of the Mahābhārata, in describing the evil portents of an impending tragic or catastrophic event, often assemble together (as in Udyoga 143.5-29, Bhīṣma 2. 16-33) all of them irrespective of the fact whether some of them are possible in the very order of nature. For example, it is stated that Arundhati went before Vasistha (Bhīṣma 2. 31), that a mare gave birth to a cow calf and that a bitch gave birth to a jackal (Bhīṣma 3. 6) and that images of gods trembled, laughed and vomited blood (Bhīṣma 2. 26, which may be compared with Brhatsamhitā 45. 8 and the verses of Garga quoted by Utpala thereon); it is several times said that the Moon and the Sun are seized (i. e. eclipsed) at an unusual season (*aparvāṇi*) or simultaneously by Rahu (vide

1766. That the months in North-west India were *pūrṇimānta* in the Kharoṣṭhī records drawn up in Kaniska's era is shown in E. I. vol. 13 p. 266 and E. I. vol. 19 at p. 10. Apatārka (p. 423) quotes a verse from बह्वृष्य 'अथपुरुषं पश्येत्तु आर्द्रं कार्यं द्विजे द्विजे' and remarks that Bhādrapada dark half is in that verse said to be the dark half of Āśvina. In the Bhavīṣya-purāṇa (Uttara-parva, chap. 132, 17) the Full Moon of Phalguṇa is said to be the end of the month' (किमर्थं कालमुत्तरपार्ते धीर्धमासा जगद्देन । उक्तवो जायते लोकं ग्रामे ग्रामे दूरे दूरे ॥). In the Matsya-purāṇa (152, 4-6) it is said that Skanda and Viśākha were born on the 15th of the dark half of Caitra, that in the bright half of Caitra itself on the 5th Indra made one boy out of the two and on the 6th crowned him as Lord. This shows that in the Matsya Caitra was *pūrṇimānta* and not *amānta*. When the month is *pūrṇimānta*, the first fortnight ending with *amāvāsyā* is assigned to a month which is one month in advance of the *amānta* reckoning i. e. what is Kārtika dark half with *amānta* reckoning becomes Mārgaśīrṣa dark half with the *pūrṇimānta* reckoning. On Jai. VI. 5. 31 Sabara quotes a Vedic passage about मधामघन 'पुरस्तात्पूर्णिमास्वराध्वरुहे दक्षिण । जतुमुखं वैवा पूर्णिमासी संवत्सरस्य वा चैवी पूर्णिमासी', which seems to indicate that the year began with the Full Moon of Caitra and that the *pūrṇimānta* reckoning was not unknown.

Bhṣmaparva 3, 28 and 32-33 and Āśvamedhikaparva 77, 15).¹⁷⁶⁷ Further, these very verses state that the eclipses of the Sun and the Moon took place on the *same day* and on the 13th and in the same month. Dr. Daftari interprets 'ekāhnā' as meaning on the same week-day and 'on the 13th tithi' (pp. 5-6 of his work) calculated according to the wrong method of those days. It is extremely doubtful whether week-days had been known or named at the time of the Bhārata war or even at the time of the composition of the Epic. It is too much to assume that the astronomers of the Mahābhārata war days, while they could predict eclipses and state accurately the position of the planets, were so clumsy as to allow a mistake of two *tithis* to occur in their calendar with respect to the occurrence of a solar eclipse. The words in Bhṣmaparva 3, 28 and 32-33 appear to be a mere exaggerated statement of portents. If real observed eclipses are meant they would have to be taken in the order of the words in the text, viz. first an eclipse of the Moon (on Kārtika purnimā) and then an eclipse of the Sun (on Kārtika amāvāsyā) and further it must be assumed that the dark half of Kārtika contained only 13 days. Dr. Daftari (pp. 44-46 of his work) holds that first there was a solar eclipse on Āśvina amāvāsyā, then a lunar eclipse and then again a solar eclipse. In that case we should expect the order to be 'sūrya-candrau' and not 'candra-sūryau'. Besides, hardly any other scholar holds that there were three eclipses one after another. Therefore, it is hardly possible to say with certainty that the author accurately states astronomical facts observed by him or even traditionally handed down as definite facts and does not draw on his own imagination about the portents or does not exaggerate

1767. चन्द्रग्रहोत्थो वृत्तो एकाह्ना हि त्रयोदशोऽयम् । अपर्वणि ग्रहे यातो यज्ञसंस्तव-
मिच्छतः ॥ चन्द्रग्रहोत्थो वृत्तो एकाह्ना हि त्रयोदशोऽयम् । अपर्वणि ग्रहेर्षतो यज्ञः संस्तव-
विच्छतः ॥ भीष्मपर्व 3, 28, 32. The cr. edition of the Mahābhārata gives only the first of these two verses, Utpala in his com. on Bṛhatasamhitā 3, 26 reads एकमासे त्रयोदशे. The words यज्ञः संस्तवविच्छतः make it quite clear that eclipses and the fortnight of thirteen tithis are taken as very evil omens. Similar words occur in Bhṣma 3, 12 and 13 quoted below in note 1779. In Bṛhatasamhitā 3, 6 it is said that a *graha* called Tvastṛ makes the orb of the Sun look dark even when there is no parva (amāvāsyā). Utpala quotes on the same a verse of Parāśara 'अपर्वणि जज्ञाहुर्षो लघा नाम महाघ्नः । आनुषोषि नमः दयाम् सर्वलोकाविपत्तये ॥'. There is no doubt whatever that the writer of Bhṣma 2 and 3 is more concerned with chronicling evil omens than with setting out accurate astronomical and other data observed by him personally or even by others.

as a rhetorical device. In *Bṛhatsamhitā* 5. 26, 97-98 Varāhamihira states the evil consequences if a moon eclipse precedes or follows a sun eclipse in the period of one fortnight.

Most of the important astronomical details will now be set out from the time when Lord Kṛṣṇa is said to have started as a peace-maker to the Kauravas. In *Udyogaparva* 83. 6-7¹⁷⁶⁸ it is said that Kṛṣṇa started in the month of Kārtika (Kāumude māsa) at the end of the śarad season and about the advent of winter, when the moon was in Revatī nakṣatra and on maitra muhūrta. Āśvina and Kārtika are at present said to form the season of śarad, and Mārgaśīrṣa and Pauṣa form hemanta. This verse itself presents a difficulty. On the Full Moon day of Kārtika, the moon is in Kṛttikā nakṣatra and the moon would be in Revatī three days before i. e. on or about the 12th of the bright half of Kārtika. If we take this along with the words 'at the end of śarad' it follows that the month was pūrṇimānta; otherwise (i. e. if the month were amānta) it would be highly improper to say that the 12th of the bright half of Kārtika was at the end of Śarad. After Kṛṣṇa failed in his mission he returned to the Pandavas (for all of which we must allow a few days after the 12th of Kārtika śukla) and reported what Duryodhana and he himself said. Two of the statements reported by him are very material. Duryodhana said to his allies: 'March towards Kurukṣetra (for battle); to-day the moon is (in) Pūṣya nakṣatra'.¹⁷⁶⁹ If Kṛṣṇa started on his mission when the moon was in Revatī (on the 12th of the bright half of Kārtika), then these above words must have been uttered in his presence on or about the 5th of the dark half of Kārtika (or of Mārgaśīrṣa if the month was pūrṇimānta). Another important statement is that Kṛṣṇa in his conversation with Karna (whom he had tried to win over) stated to him: 'this is a mild month in

1768. मित्रे सुहृते संगते सुहृद्येषु दिवाकरे । कौमुदे मासि रव्यायं जग्दन्ति क्षिमायमे ॥
उद्योगपर्व 83. 6-7. 15 muhūrtas of the day and 13 of the night are referred to even in the सप्तपञ्चाङ्गम् X. 4. 3. 18, 25, 27 and the तैत्तिरीयब्राह्मण (III. 10. 1.1) mentions the names of the 15 muhūrtas of the day (such as Citra, Ketu &c.). In the Kumārasambhava VII. 6 the maitra muhūrta is mentioned in connection with ceremonies preceding marriage. The commentators explain maitra as the 3rd muhūrta after sunrise. In the Atharva Jyotiṣa fifteen muhūrtas of the day are enumerated of which the first three are Raudra, Sveta and Maitra.

1769. आज्ञापयन्च राज्ञस्तान् पार्थिवान्दुष्टचेतसः । वयस्यं वै कुक्षेत्रं पुष्योद्यति
दुःखं दुःखः ॥ उद्योग 150. 3.

which fodder and fuel can be easily had, which is neither too hot nor too cold; on the 7th day (from today) there will be amāvāsyā; battle may be joined on that day; they regard it as having Indra for its (guardian)¹⁷⁷⁰ deity'. Therefore this must have been said on or about the 8th of the dark half of the month. But what was the name of the month? If the reckoning was pūrṇimānta, the month must be Mārgaśīrṣa, but if the reckoning was amānta, the month must be Kārtika. The words 'this month' taken along with Udyoga 83. 6-7 would indicate that the month meant was Kārtika. Further, Indra was the deity of Jyesthā nakṣatra and the amāvāsyā (as stated in Udyoga 142. 16-18) had Jyesthā nakṣatra. In modern times this is possible on Kārtika Amāvāsyā, while there cannot be Jyesthā nakṣatra in modern times on Mārgaśīrṣa amāvāsyā, but only on or about the 13th of the dark half of it. But this passage itself (Udyoga 142. 16-18) is in conflict with Śalya 35. 10 where Kṛṣṇa says: 'the Kauravas do not act up to my words, being driven to do so by the Time Spirit; O! descendants of Pāṇḍu, go out (for battle) together with me when the moon is in Pūṣya'. If the moon was in Jyesthā on amāvāsyā when Kṛṣṇa had proposed to Karna that the war should be begun, this passage of Śalyaparva would put the beginning of the war 16 or 17 days after Kārtika amāvāsyā, which is not warranted by any other passage and which no scholar puts forward. In Udyoga 143. 11 it is stated,¹⁷⁷¹ 'the spot on the moon has turned away (disappeared) and Rāhu approaches the Sun.' The exact meaning of the first quarter is not quite clear. Some interpret it to mean that 'an eclipse of the Moon has already taken place'. The moon looks beautiful with the spot thereon (compare Śakuntala I 'mulinamapi himānātor lakṣmī lakṣmīm tanu'). The disappearance of the spot might have been looked upon as an evil portent. Even supposing that the first quarter refers to an eclipse of the moon, it does not matter much. The second quarter states that an eclipse of the Sun was expected when Karna addressed these words to Kṛṣṇa, the envoy of the

1770. सौम्योऽथ वदते नामः सुभाषयवसंघतः । ... निष्पद्यते रसवतोऽथ नाकुम्भ-
सिद्धिः सुखः ॥ सतमश्चरपि दिवसादुमात्राया भविष्यति । संघामो पुत्रपत्नी तरयां ताम्बाहुः
अकुम्भवताम् ॥ उद्योग 142. 16-18. श्रीलक्ष्मण explains 'संघामः संघामसाधनकलापः
पुत्रपत्नीमेकीयुवाकलितताम् । संघामारम्भस्तु दिनान्तर एवेति वक्ष्यते ।'. न कुर्वन्ति वचो मध्ये
कुरुः काटनेतिद्वयाः । निर्वच्यन्ते वाणवेद्याः पुत्रेण सज्जिता मया ॥ शल्य 35. 10.

1771. सोमरप लभ म्पाहुं राहुर्लक्ष्मणेति च । दिव्योत्पत्ताः पतन्वेताः ननिर्वाताः
सकाम्यताः ॥ उद्योग 143. 11. Almost these very words occur in भीष्म 2. 32 (प्रावृत्त
लभ सोमरप भविष्यति महद्भयम्) and in भीष्म 3. 11 (अर्कः राहुर्लक्ष्मणेति च).

Pāṇḍavas. Later on in Bhīṣma 2. 23 it is stated¹⁷⁷² that the Moon had become devoid of brightness, was without its spot on the Full moon day of Kārtika and assumed the colour of fire while the sky retained its original hue; so that if there was an eclipse of the moon it was on Kārtika Purnimā and an eclipse of the sun was yet to take place. On the whole, therefore, one may assume, though not without hesitation, that the months were *amānta*, that possibly there was an eclipse of the moon on Kārtika Full Moon when Kṛṣṇa had gone as a peace-maker and that there was a solar eclipse on the *amāvāsyā* of Kārtika just about the time the war began. In Śalyaparva 56. 10 we again meet with the words (at the beginning of the mace duel) 'Rāhu swallowed the Sun at an unusual season'. This passage and Āśvamedhika 77. 15 (Rāhu-agrasadādityaṁ yugapat soma-meva ca) rather suggest that the eclipse of the sun at an unusual time had become a stock example of an evil portent without the actual occurrence thereof. The words in Śalyaparva refer to the last day of the war before the mace duel between Duryodhana and Bhīṣma and the passage says that Rāhu seized the sun and there was an earth-quake also. Hardly any one (except Dr. Daftari) holds that there was another eclipse on the last day of the war, when just before the war there already had been an eclipse on Kārtika *amāvāsyā*.

As to the exact *tithi* and *nakṣatra* on which the Great War began, there are many conflicting statements. In the Bhārata-sāvitrī it is stated that the Bhārata war started in the first month (i. e. Mārgaśīrṣa) of Hemanta on the 13th of the bright half when the moon was in the nakṣatra presided over by Yama (i. e. Bharanī)¹⁷⁷³. The Bhārata-sāvitrī is no part of the

1772. अदृश्यः समपा ह्रीनः पौर्णमासी च कार्त्तिकीम् । चन्द्रोदयप्रवर्धश्च समवर्णः (v. L. पञ्चवर्णः) - समस्तर्णे ॥ भीष्म 2. 23.

1773. The following verses of the भारतसावित्री are material for the days of the important events of the war: 'हेमन्ते यधने मासे शुक्लपक्षे चतुर्दशी । पञ्चमे भारते युद्धं नक्षत्रे यमदेवतम् ॥ कालयुग्मां निहतो मीधः कुर्यापक्षे च सप्तमी । अदृश्यां चैव सौभद्रो मथुर्यां च जयद्रथः । दृश्यां भगवत्सु महायुद्धे निपातितः । एकादश्यामथरात्रौ हतो वीरो यदोत्कचः । ततः यन्मतसमये विराटयुधौ हतौ । द्वादश्यां चैव मथ्याद्धे द्रोणाचार्यो हणे हतः ॥ त्रयोदश्यां तु मथ्याद्धे वृषसेनो निपातितः । चतुर्दश्यां तु पूर्वाह्णे रणे दुःशासनो हतः । ... अमायां यमदेवेण शत्रवो मर्त्योधिषो हतः । ... अमायामथरात्रे तु राजा युधामन्युः हतः । ... अमायामेव वामिन्यां द्रोणिना निहतस्तदा । पूषयुग्मः शिशुग्रीवो च द्रोणयाः पञ्च चालजयाः । (set out at the end of हरिवंश in the Citraṭīkā edition). There are some statements here that are opposed to the text of the Mahābhārata. Abhimanyu

Mahābhārata, yet it has some traditional value, being probably earlier than all the commentators of the Mahābhārata and later than the text of Sauti. In conflict with this passage of the Bhāratasāvitri we have the words of Udyoga 142. 18 (quoted above) where Kṛṇa says to Karna that battle may be joined on amāvāsyā when the moon is in Jyesthā. The Mahābhārata itself states that after the disposition of the vast armies were made and commanders were appointed, Duryodhana called Uśaka and sent him to the Pāṇḍavas to inflame their feelings with the words¹⁷⁷⁴ (Udyoga 160. 93) 'the worship of steel (weapons) has been performed, the site of Kurukṣetra is dried up (has no mud), your horses are well fed, warriors are hired by you; fight tomorrow'. This Lohābhihāra (or-sāra) is the same as the rite of *nirājanā* (according to the Amarakośa) or is performed immediately after *nirājanā* (for which see pp. 230-231 above). Kautilya (II. 30 p. 135) prescribes a *nirājanā* rite at the start of an invasion and when two seasons meet. So a *nirājanā* rite on Kārtika amāvāsyā would be most appropriate (both because a battle was to be begun and because at the end of Kārtika the season of Śarad ended). The Bṛhatsamhita (43. 1-2) prescribes a *nirājanā* rite for horses, elephants and men on the 8th or 12th of Kārtika bright half or on the 15th of Kārtika (Full Moon or *amāvāsyā*). It is extremely doubtful

(Continued from the last page)

was killed on the third day after Drona became commander-in-chief. It may be noted that Nīlakaṇṭha explains धर्मदेवता differently as meaning Mr-gadeva which has a double deity as its presiding deity. It may be noted that this text of the भारतसावित्री as printed is not quite reliable, since नीलकण्ठ in his commentary on श्रीमद् 17. 2, reads 'अर्जुनेन हतो भीमो मायमासेऽस्मिताहमे' for कालाश्रम ... सप्तमी and 'अर्जुनं तु मरुपक्षे मारुताहो निपातितः' for 'द्विदश-रणे हताः'. If these readings be accepted it follows that the Bhāratasāvitri implicitly recognizes the existence of a *tithikṛpaya*, since Drona is there said to have been killed on the 13th tithi of dark half when the epic itself says that he died on the 15th day after the battle began. As the war commenced on the 13th of bright half, there would be 16 days on 13th of dark half.

1774. लोहाभिहारो निर्वृतः कुरुक्षेत्रमर्द्धमम् । दृष्टास्तेऽश्वा मुता घोषाः श्वो युद्धस्य सकोदयः ॥ उद्योग 160. 93. About this, अमरकोश says 'लोहाभिहारोऽथ युद्धो राज्ञो भीराजने तिथिः (v. 1. नीराजनमिति 1)'. The तिथित्व of रघुनन्दन quotes (Jivananda p. 35) a passage from the Devīpātāna that on the 6th of Caitra Skanda is to be worshipped and it is called स्कन्दपूजः. The निर्णयनिष्पत्ति II (on मार्गशीर्षकृत्य) says 'मार्गशीर्षपूजः कर्म्यापद्यति मदारपदेन पवित्राः ... इदमेव स्कन्दपूजः'.

whether Mr. Karandikar is right in saying that Lohābhīhāra (or-sāra) refers to Skandasashti. In the first place, the worship of weapons can be done at any time, particularly when a battle is to be commenced. In the second place, it is not necessary to postulate the lapse of six days and more for the sending of Ulūka and his return from the time when Kṛṣṇa said that battle may be begun on amāvāsya. The armies had taken up opposite positions on the field of Kurukṣetra and Ulūka could have come and gone in a day or two. Further, we have no evidence that Skanda-sashti was performed in northern India in Mārgaśīrṣa, though very late works composed by *dharmajñānis* like the Nirṇayasindhu say that Skandasashti is the same as Campāsashti in Mahārāṣṭra and is observed on the 6th of Mārgaśīrṣa. Raghunandana quoting Devīpurāṇa places Skandasashti on Caitra 6th of the bright half and is supported by the Matsyapurāṇa quoted above in n.1766. There is no reason why the actual fight should commence so late as the 13th day of Mārgaśīrṣa (or even 11th as Mr. Karandikar suggests) when Kṛṣṇa said that it should be joined on amāvāsya. It is quite possible that the war began on or about Kārtika amāvāsya. The observance of 'lohābhīhāra' does not lead to the certain inference that the war was not begun till several days after the 6th of the bright half of Mārgaśīrṣa. Similarly, Mr. Karandikar says that the moon is ordinarily in Bharani on the 11th or 12th of the bright half of Mārgaśīrṣa. It may be so. But it is possible to have the moon in Bharani even on the 13th. I am inclined to hold that the Bhāratasāvitri dates of the beginning of the war embody a different tradition altogether from the one contained in the Mahābhārata itself. The Bhāratasāvitri is silent about nakṣatras on which the principal events of the war took place except at the commencement of the war. It mentions no *tithikṣaya* or *tithivṛddhi*. Kṛṣṇa sends a message with Ulūka to Duryodhana (Udyoga 162, 57) 'tomorrow you will be seen' (in your true colours) and Arjuna does the same (Udyoga 163, 14).

The Mahābhārata nowhere states quite explicitly the *tithi* or *nakṣatra* on which the battle actually commenced. We have to rely upon various indications to arrive at the *tithi* or *nakṣatra*. Balarāma could not bear to see the fight between Duryodhana and Bhīma, both of whom were his pupils in mace-duel and went on a pilgrimage (Udyoga 157, 33-35 and 158, 39). Balarāma returned on the 18th day of the war and (in Śalya paṭha 34, 6)

he remarks, 'it is 42 days since I left (on a pilgrimage); I started when the moon was in Pūṣya and I have come here again on Śravana' ¹⁷⁷⁵. In Śalya 35. 13-14 it is stated that Balarāma went to the river Sarasvatī on pilgrimage on 'maitra-nakṣatra-yoga' (i. e. when the moon was in Anurādhā). This conflict may be resolved by holding, as Nilakanṭha does, that Balarāma left the Pāṇḍavas on Pūṣya, reached the Sarasvatī on Anurādhā and returned on Śravana. If we follow Śalya 34.6 the war commenced when the moon was in or near Mṛgaśīrṣa (18 nakṣatras before Śravana). This would be in direct conflict with a passage in Bhīṣmaparva 17.2 that ¹⁷⁷⁶ 'on the day of battle the moon was in the province of Maghā' and also other passages that will be indicated later on. This last passage should ordinarily mean that the moon was near Maghā. Mr. Karandikar looks upon Śalya 34.6 as an interpolation and takes Bhīṣma 17.2 to mean that the moon was in an inauspicious nakṣatra of the category of Maghā. This would suit Bharatī but not Rohiṇī or Mṛgaśīrṣa. His meaning is far-fetched and he does not explain why Bharatī was not directly mentioned in the Epic, when in several other places the epic does mention directly the nakṣatra concerned. His explanation gives the go-by to the 13th *śloka*. Dr. Daftari boldly asserts that we must transpose the nakṣatras (in Śalya 34. 6) and read 'śravane samprayātosmi pūṣyena punarāgataḥ'. If we once resort to these methods followed by these two learned writers, there is no knowing where one should stop. There are scholars who might with equal or greater plausibility claim that most of these astronomical references are either of very late date or are interpolations (vide Vaidya's 'Mahābhārata' p. 71). Similarly, if we once concede that we are at liberty to change readings to suit our theories even in the total absence of all manuscript evidence, then there is no sure foundation on which we can build. The Mahābhārata passages have a tradition of centuries behind them. We must, in the absence of good mss. evidence to the contrary, either accept *them all* and try to explain them or we must give up the job of reconciling them as a hopeless tangle and rely on other evidence to arrive at the date of the

1775. चत्वारिंशद्वार्षाब्दं द्वे च मे निवृत्तस्य वै । पुष्पेण संप्रयातोऽस्मि अरणे पुनरागतः । शल्य 34. 6.

1776. महाविषयः सोमस्तद्विने पश्यपश्य । दीप्यमानाश्च संपेतुर्विभ । मत महायुद्धः । भीष्म 17. 2. नीलकण्ठ explains: महा विषयं महायुद्धं तत्र विषयो देशः पितृलोकस्तद्वैः सोमः ।

Bhārata war as best as we can. We saw above that Jyesthā was the nakṣatra on Kārtika amāvāsya and, if the war began then, the nakṣatra on the 18th day from then would be Pūṣya. Nilakaṇṭha, following the Mīmāṃsā rules of interpretation, holds that the concluding passage (*upasaṃhāraśloka*) is superior in strength to passages that occur at the beginning of a work, that the passage in Śalya 34. 6 is the dominant one and other conflicting passages must be either brushed aside or explained away in conformity with Śalya 34. 6 and gives an explanation of 'Maghaviṣayagaḥ somaḥ' which is quite unsatisfactory. Dr. Daftari also holds, relying on Atharva Jyotiṣa, that the passage means 'the moon was in Mūla' (p. 27 para. 62-65 of his work 'Astronomical method' &c.). The explanation is ingenious but one fails to see why this round-about way was resorted to and why the text did not simply say 'mūlanakṣatragāḥ somaḥ', which violates no metrical requirements. In Anuśāsana parva (167. 26-28) Bhīṣma, while on the bed of darts, states:¹⁷⁷⁷ 'the sun has turned (towards the north): 58 days have passed by since I laid myself down on this (arrow bed). This is the mild month of Māgha that is now current, three parts of it remain and this fortnight should be *śukla*'. Bhīṣma was struck down on the 10th day of the war; so 67 nights had passed from the day when the war began to the day in Māgha on which this was uttered. The difficulty is how to connect 'tribhāgaśeṣaḥ', whether as an adjective of 'māsa' or of 'pakṣa'. If we take it in the first way, these words were uttered on 8th of Māgha śukla: if we take it as an adjective of 'pakṣa', then they will have to be taken as uttered on the 4th of the bright half or on the 4th of the dark half which may be regarded in its astrological effects as equal to *śuklapakṣa* (though the tithi itself is in the dark half). If the words were uttered on the 8th of Māgha śukla, the Bhārata war began on Kārtika amāvāsya (which will be in consonance with Udyoga 142. 18 quoted in n. 1770). The passage in Anuśāsana (167. 26-28) is supported by two other passages. After the war was over, Yudhiṣṭhira went to the capital and stayed there for 50 nights and when he found that the Sun had started on its apparent northward path (*uttarāyana*) he came to Bhīṣma (Anuśāsana 167. 5). In Santi-parva 51. 14 Kṛpā says to Bhīṣma: 'You have yet to live 56 days.' Nilakaṇṭha, who takes Śalya 34. 6 as the dominant passage, puts a

1777. अद्य जातं रात्रिः शयनस्थाय मे गतः । ... माघेयं समुद्यतो मासः सौम्यो पुष्टिरिति । विनामघेयः पक्षेयं शुक्लो भवितुर्नर्हति ॥ अनुशासन 167. 26-28.

most far-fetched construction on the word 'astapañcāśatam', which he takes to mean 'one hundred minus 58' i. e. 42 nights and explains 'pañcāśatam sat ca' as equal to 30. This shows to what straits commentators are reduced when conflicting passages have got to be explained away. One more indication about the *tithi* on which the war commenced is afforded by Dronaparva chap. 184, where it is stated that a grim fight went on till midnight when Ghaṭotkaca was killed, that the fatigued armies then snatched some sleep, that then the moon rose at about 2 A. M. (verse 46) and that the fight was then resumed¹⁷⁷⁸ (chap. 186. 1 'tribhāgamāstraśeṣāyām rātryaṁ yuddham-avartata'). This description of moonrise shows that Ghaṭotkaca was killed on or about the 11th of the dark half. We know from the Mahābhārata itself that Ghaṭotkaca was killed on the night of the 4th day of Droṇa's command or on the 14th day after the war began. This would establish that the war began on the 12th or 13th of the bright half and ended on the 14th of the dark half or on amāvāsyā of Mārgaśīrṣa. Dr. Daftari holds that this description is an interpolation.

If we try to find out the *nakṣatra* on which the war began, we have one sure criterion in Śalya 34. 6 viz. that the war ended on Śrāvāṇa nakṣatra when Balarāma returned from pilgrimage. Now the moon cannot be in Śrāvāṇa at all in Mārgaśīrṣa dark half, but may be in it on the first or 2nd of the bright half of Pausa. So between the *tithi* and *nakṣatra* as disclosed by the Mahābhārata itself there is a slight discrepancy of a day or two. There is another way of looking at the data. Bhīṣma was waiting for uttarāyana to begin and we know that he passed away on the 59th day after he was mortally wounded on the 10th day of the war. Therefore, a period of 67 days (58 nights of his lying on arrow-bed plus 9 nights of the battle when he slept on his usual bed) elapsed between the beginning of the war and the beginning of Uttarāyana, which undoubtedly occurred in Māgha in that year (as Anuśāsana 167. 28 expressly states). The real difficulty is to find out the *tithi* of the commencement of Uttarāyana. But if we accept the approximate *tithi* and *nakṣatra* (as stated above) of the end of

1778. विभागमावशेषात् रात्र्यां युद्धमवर्तत । युद्धात् पाण्डवानां च संवृत्तानां विशा-
मये ॥ इति 186.1. श्रीमद्भट्ट explains 'संवृत्तव्यावशेषात्', तत्र सुषोढयोत्तरं यपोदरात्
दोषात् न शक्यः ॥ He supposed that Ghaṭotkaca was killed on the 12th of the
dark half.

the war (i.e. Mārgaśīrṣa amāvāsyā or 1st of Pausa and Śravana nakṣatra), uttarāyana began 49 days thereafter i. e. on or about the 4th of the dark half of Māgha. According to the Vedāṅga-jyotiṣa, 4th of the dark half of Māgha is one of the tithis on which uttarāyana may begin (vide Dikṣit's work pp. 75, 91). How scholars accept one of the data and reject others is well illustrated here. Acc. to Salya 34. 6 the war ended on Śravana (and so should have begun when the moon was in Mrgaśīrṣa). Acc. to the Bhāratasāvitri the war began on Bharani and on the 13th of the bright half of Mārgaśīrṣa and ended on Amāvāsyā (and therefore the nakṣatra was Mūla or Pūrvāśādhā). Arjunamīra gives up the nakṣatras and sticks to the tithis. Mr. Karandikar gives up the express verse about Śravana (and regards that whole chapter as an interpolation), he gives up the 13th tithi of the beginning of the war as given in the Bhāratasāvitri, holds that the war began on 11th instead and sticks fast to the Bharani nakṣatra given in the Bhāratasāvitri. Dr. Daftari altogether changes the reading of Salya 34. 6 by transposing the nakṣatras mentioned.

The difference between the day of Uttarāyana in Māgha stated in the Mahābhārata and the day thereof at present is utilised by scholars for arriving at the date of the Mahābhārata war.

There are other data in the Mahābhārata from which also the date of the Mahābhārata war is sought to be deduced. Before entering into details, some matters that are accepted by most scholars may be stated here. It is generally held that there were two eclipses, first, one of the moon immediately followed by a solar eclipse, that there was a fortnight of 13 days which was looked upon as very unusual and a very evil omen. Vide Bhīṣma 3. 28 quoted in n. 1767. In Bhīṣmaparva 3. 31-32 Vyāsa is reported as saying, 'I have known amāvāsyā occurring on the 14th, 15th or 16th day (of a pakṣa), but I do not know an amāvāsyā occurring on the 13th day (of a pakṣa); both the moon and the sun were eclipsed in the same month on the 13th day'. In the Maṇṣala-parva¹⁷⁷⁹ 2. 18-19, when Kṛṣṇa, 36 years after the war, beheld certain portents it is said, "on observing those portents on the amāvāsyā occurring on the 13th day he declared 'Rāhu had made this (13th day) appear as the 14th and 15th (when usually there is amāvāsyā) when the Bhārata

1779. एवं पश्यन् इषीकेशः संवत्सं कातपर्वणम् । अर्वाक्षयामनावासां दानं दृष्ट्वा
 मज्जीविद्वन् ॥ अर्वाक्षी पञ्चदशी कुरुषु राहुणा पुनः । मासे वै भारते पुनरेवामास अवाप
 नः ॥ मोसदपर्व 2. 18-19.

war took place; to-day it has again occurred for our destruction'. From these words it is clear that the occurrence of an *āvāsyā* at the end of a *pakṣa* of 13 days was looked upon as a very evil omen. Then many scholars hold that a comet had also appeared at the time of the great war. Bhīṣma 3. 13¹⁷⁸⁰ states, 'a very frightful comet stands in the sky covering the constellation of Pūṣya'. There are grave doubts whether the statement is made from actual observation. The appearance of a comet has always been associated in ancient times with great calamities. Compare Kumārasambhava II. 32 'upaplavāya lokānām dhūmaketurivot-thitāḥ'. As indicated above, the Mahābhārata gathers together several possible and impossible things to emphasize their significance as to impending calamities. Therefore the inclusion of a comet among portents does not establish that a comet had actually appeared at the time of the Bhārata war. Supposing for argument that a comet had appeared, that circumstance is of no help at all in settling the date. A large number of comets is included in the sun's retina. The number of comets of long periods that approach the sun in a century is said to be 300. There is nothing to show what particular comet appeared at the time of the war and no one has data to connect the Mahābhārata comet with Halley's comet or any other comet well-known in modern times. Therefore the *datum* about a comet is entirely worthless for purposes of chronology. According to Brihatsamhitā 11. 5 and Utpala thereon the ancient writer Parāśara held the view that there were 101 *ketus* and Garga said that there were a thousand. The description in Bhīṣma 3. 13 states that the *perihelion* of the comet was in Pūṣya. In Udyogaparva 143. 10 it is said 'since a *graha* specially afflicts Citrā, a great calamity is indeed approaching the Kauravas'. This may probably refer to a comet. Two other verses appear to have some bearing on this. Bhīṣma 3. 12 states¹⁷⁸¹ that the white *graha* stands traversing

1780. श्वेतो बहस्तथा चित्रो समतिक्रम्य तिष्ठति । अभावं हि विशेषेण कुक्ष्यां तत्र पश्यति ॥ धूमकेतुर्महावीर्यं द्रुपदं चाक्रम्य तिष्ठति । सैनयोऽरशिर्ध्वं घोरं करिष्यति महाग्रहः ॥ ... श्वेतो बहः प्रज्वालितः सधूम इव पावकः । ऐन्द्रं तेजसि च भस्वं ज्येष्ठामाक्रम्य तिष्ठति ॥ भीष्म ३. १२, १३, १४. The Madras edition reads दशमो बहः in भीष्म ३. १४ and Dr. Daftari proposes to read चित्रो for चित्रात् (p. 64 para 130).

1781. ध्रुवं यज्वदितो योभ्रमपतस्यं प्रवर्तते । ऐक्षिणीं वीजपरिपुमनौ च शशि-
मास्करौ ॥ चित्रांश्चाप्यनरे चैव तिष्ठति परुषग्रहः । भीष्म ३. १७ ; compare बृहत्संहिता
११. ३७ 'श्वेत इति जडाकारो रक्षः इयाको विचित्रभागवतः । विनिर्गतेऽसदस्यं विभागोऽप्य-
मयाः कुक्षौ ॥', उत्पल explains: 'रक्षः परुषः इयाकः कुक्ष्यार्णोः'. It is remarkable that
वृहत्सं. ११. ३७ is चित्रासु कुक्ष्येवाधिपस्य मरुतं समादिशेत्तज्ज्ञः; thus agreeing very
closely with भीष्म ३. १२.

citrā (i. e. it is about to enter into *śukli*) and verse 16 says, 'the white *graha* is fiery like fire emitting smoke and stands occupying Jyesthā which is a bright star presided over by Indra'. What is meant by 'white *graha*'? The words 'sveto *grahaḥ*' should ordinarily denote Venus. Nilakantha takes them to mean Ketu (node) in Bhīṣma 3. 12 and another comet in 3. 16. If this latter explanation be accepted there were two comets seen at the time. Even if we hold that Bhīṣma 3. 16 describes the tail of the comet mentioned in 3. 13, that is of very little help. All that would be meant would be that the tail of the comet was a very long one. Bhīṣma 3. 17 has been taken to refer to Rāhu by Nilakantha, while some modern scholars hold that it refers to a comet. It means, 'a cruel comet standing between Citrā and Svāti, afflicts Rohiṇī and also the sun and the moon'. The description of the Ketu called Śveta in Brhat-saṃhitā 11. 39 agrees very closely with the description in the Bhīṣmaparva and Parāśara quoted by Utpala thereon states that the Ketu called 'Śveta' becomes visible after 115 years and portends the destruction of two-thirds of the population.

Then there are several passages which state the positions of several planets just before the battle or on the day the battle began. Here again at least two different positions are assigned to each planet except Mercury. It is first to be noted that at the beginning of the war all the seven planets excluding Rāhu and Ketu are declared to have been near each other (Bhīṣma 17. 2, q. in note 1776 above). We know from the Mahābhārata itself that the Sun and the Moon on Kārtika amāvāsya were in Jyesthā. If the war began on amāvāsya or a day later, the planets must be near Jyesthā. If the Bhāratasāvitrī be followed then the war began on Mārgaśīrṣa bright 13 and on Bharanī. If that were so, the sun and the moon cannot be together. Mr. Karandikar takes 11th of the bright half of Mārgaśīrṣa to be the tithi of the beginning of the war and holds that the Sun was in nakṣatra Jyesthā and that the moon was in Bharanī (following the Bhāratasāvitrī as to this last). I should hold that we are not at liberty to take one datum from one group of statements and another from another group and then say that it is proved that the war was fought at a particular time. It is further noted in Karṇaparva 37. 4 that on Karṇa's death (i. e. 17 days after the war began), the seven planets were seen going away from the Sun.¹⁷⁸² The positions of the planets at the beginning of the war were as follows:—

1782. निःसरन्त्यो ऽपहृश्यन्त सुपर्त्तस्य महासुहोः ॥ कर्ण ३७. ४.

- SUN—** Udyoga 143. 11 (Rahu approaches the Sun)
 Bhīṣma 3. 11 (" ")
 Bhīṣma 3. 28, 32 (q. above in n. 1767)
 The Sun was either in Jyēsthā or near Mṛgāśīrṣa.
- MOON—** Bhīṣma 3. 17 (*paraṇa graha* i. e. Rahu afflicted both the Sun and the Moon) and Rohiṇī.
 Bhīṣma 3. 28, 32 (q. above in n. 1767)
 Bhīṣma 17. 2 (the Moon was in the province of Maghā q. above in n. 1776).
- MERCURY—** Kārmasparva 94. 49 says that on Karna's death the son of the Moon (i. e. Mercury), the white luminary, rose slantingly resembling in hue fire and the Sun. The Sālyaparva 11. 18 states that Mars, Venus and Mercury were in conjunction.¹⁷⁸³ If Mars was in Maghā as stated in Bhīṣma 3. 14 and Mars and Mercury were in conjunction Mercury would be in Maghā, which forebodes destruction of people by war, as stated in Brhatsaṃhitā 7. 3.
- MARS—** Udyoga 143. 9 states, 'Mars having made a retrograde motion in Jyēsthā seeks (to reach or afflict ?) Anurādhā, the nakṣatra presided over by Mītra, as if bringing death (to friends)'. Bhīṣma 3. 14 states: 'Mars is retrograde in Maghā.' What is the meaning of this? Literally it means that Mars was in Maghā and was retrograde in motion. Mr. Karandikar holds that Mars had only *dṛṣṭi* on Maghā and was in Pūṣya. Supposing this is correct, Mars was not near the Sun but far away.
- Bhīṣma 3. 18 declares: 'Mars, having changed its motion after being retrograde and with the lustre of fire, stands covering Śravana, the mansion of Brhaspati'.¹⁷⁸⁴

1783. एतच्च तिथौ गतमार्कण्डेयः सोमस्य पुत्रोऽपुष्टिवाचं विवर्द्ध ॥ कर्णस्य ३४.
 ४९: अयमप्युपराधुर्वा शशिजेन समन्वितौ । अरसे पाण्डुपुत्राणां दुरस्तात्सर्वधुनोवाय ॥
 अल्प ११. १८.

1784. कुला आहारको वक्तुं प्रवेष्टायां मधुसूदन । अयुरायां पार्थस्यते मेधे संगमयज्ञिन ॥
 उद्योग १४३. ९; महासप्तद्वारको वक्तुः अयमेव न कुहस्यति । सर्वं मत्तत्रमाकम्प्यं धृष्टकेन

We find that the Mahābhārata employs two classes of expressions. When it uses words like 'tisthati' (stands), 'ākramya' (having traversed), 'samvṛtya or samparivārya' (having covered or concealed) it means that the planet was in or very near that nakṣatra. When words meaning 'afflicts (pīdayati)' are employed, the meaning is probably that the planet has only dr̥ṣṭi on the nakṣatra. It is impossible to say whether the rules and theories about dr̥ṣṭi or pūrṇa dr̥ṣṭi and partial dr̥ṣṭi had been evolved at the time of the Mahābhārata War. If the war was fought about 3101 B. C. or even 1931 B. C. there is nothing to establish that the theories about dr̥ṣṭi contained even in the Atharvājyotiṣa (which is certainly later than the Vedāngajyotiṣa of the Ṛgveda i. e. much later than about 1200 B. C.) were known then. Vide under Venus for further difficulties.

JUPITER— Bhīṣma 3. 14 states that Jupiter was retrograde in Śrāvana; Bhīṣma 3. 27 states,¹⁷⁸⁵ 'Both Jupiter and Saturn that had stayed together for a year are near Viśākhā and are both fiery'.

Jupiter cannot stay for one year in one nakṣatra; it traverses $2\frac{1}{2}$ nakṣatras in a year. If at the time of the war Jupiter was near Viśākhā it could not have been near it for a year. Eleven months before that it would have been very near Citrā. If it was near Viśākhā at the time of the war and the Sun was in Jyēṣṭhā, it can hardly be correct to say that seven planets had come together in the sky (there being a distance of about two nakṣatras or about 26

(Continued from the last page)

वीर्यते ॥ भीष्म ३. १४ : यत्नामुपलं कृत्वा च भवर्णं पावकप्रभः । ब्रह्मराशिं समावृत्य सोऽपि
तापुर्गोऽप्यस्थितः ॥ भीष्म ३. १८. उपपत्त on बृहत्संहिता १. १०. explains, अनुवर्के स्पष्ट-
मतिवम् । यत्रो मतिः स्पष्टया पुनः स्पष्टो मतिमाश्रितो भवति तत्र दृष्टव्यते. In these
verses there is probably some reference to the verses of Parāśara and Garga
quoted by Utpala on Bṛhatsamhitā 6. 1-13. Garga quoted on 6. 13 says that
the nakṣatras from Pūrvāṣāḍhā to Aśvinī are to be of dakṣiṇa-mārga and
the movements of Mars in them cause danger.

1785. संपरिवारं धाविनी च ग्रहो मन्त्रितानुभो । विद्याभाषः समीपस्थो बृहस्पति-
पतेत्यसौ ॥ भीष्म ३. २७ : बृहस्पतिः संपरिवारं रोहिणीं चतुर् चन्द्रार्कसमो विद्योपेतः ॥
कर्ण १४, ५१.

degrees between the two). Even if we hold the meaning to be that Jupiter and Saturn had remained near Viśākhā for one year and are (now at the time of the war) fiery, that does not solve the difficulty. In the first place, it is not a natural construction. This meaning would leave the exact position of the two planets at the time of the war unspecified. But Jupiter and Saturn must be supposed to be in or near Jyesthā if the Sun was in Jyesthā at the beginning of the war. If Saturn was in Jyesthā at the time of the war it could have been one year in Viśākhā about two years before the war. What is the propriety of mentioning Saturn's position two years before the war? The relevant point is to state that position at the time of the war. Therefore it must be held that Bhīṣma 3. 27 states their position at the time of the war and adds one more circumstance that they were there for one year.

Kaṇva 94. 51 says: 'Bṛhaspati having entirely covered Rohini has become like the Sun and the Moon'. If at the beginning of the war Bṛhaspati was retrograde and was near Viśākhā, it passes one's understanding how in a fortnight it came to Rohini. Mr. Karandikar suggests that Rohini here is the name of Jyesthā as in the Tai. S. IV. 4. 10. 1-3. Again in this explanation there are several difficulties. There is nothing to show that at the time of the Bhārata war or of the epic Jyesthā was called Rohini. The Tai. S. does not employ the name Jyesthā in its list. It speaks of Rohini once as having Prajapati for its presiding deity and then as having Indra as the presiding deity. Jyesthā is well-known to the Mahābhārata and the word is employed by it in other passages. Further, if Bṛhaspati had covered Jyesthā it can hardly be correct or even useful (for the purposes of chronology) to say that Jupiter was near Viśākhā.

VENUS—

Bhīṣma 3. 15 states that Venus¹⁷⁸⁶ having ascended (i. e. occupied) the Pūrvābhādrapadā nakṣatra shines charmingly and it looks up to Uttarābhādrapadā together with (?). The meaning of 'parikramya sahitaḥ' is not at all clear. However the first half is as clear as possible. Venus was in Pūrvā Prosthapadā. If the Sun was in Jyesthā on Kārtika amāvāsyā, it is impossible that Venus could have been in the 8th nakṣatra from Jyesthā. Venus is never more than four nakṣatras from the Sun in the sky. This would completely knock on the head the principal statement that seven planets were near each other. Mr. Karandikar in desperation suggests that we should understand Pūrvāsādhā for 'Prosthapade Pūrve' and also that the word 'Prosthapade' was an interpolation inserted by some busy body later on. As I have frequently said above, this is a most unjustifiable way of dealing with the so-called astronomical data in the Mahābhārata. 'Prosthapade Pūrve' can never mean 'Pūrvāsādhā'. In the Tai. S. IV. 4. 10. 1-3, and the Tai. Br. I. 5. 1 and III. 1. 1 the word Prosthapadā is expressly employed for Pūrvā Bhādrapadā. Why should one word in a verse be held to be interpolated? Is it because it does not agree with one's hypothesis? In Salya 11. 18 Venus and Mars are said to be in conjunction with the Moon. If the war started on Bharatī as the Bhāratasāvitrī says, then at the time of the mace-duel the moon might be in Jyesthā and therefore both Mars and Venus will have to be in Jyesthā. But this is opposed to two of the passages cited above referring to the position of Mars. If the war began on Jyesthā and Kārtika amāvāsyā, then on the 18th day the moon will be in Pūṣya or Āśleṣā and both Venus and Mars would have to be in one of these two. In any case, if Venus was in Pūrvābhādrapadā at the beginning of the

1786. शुक्रः सोढयदे पूर्व समावृत्त विरोचते । उत्तरं तु परिक्रम्य सहितः समुदीकते ॥
गीता 3. 15.

war, on the 18th day it can neither be in Jyesthā, nor in Pūṣya nor in Āśleṣā. Besides, it is debatable whether Bhīṣma 3.16 (where 'sveto grahaḥ' is mentioned) refers to Venus or not. Venus is often called 'Sita' in ancient astronomical works (e. g. in Brhat-samhitā 9. 42, 45).

SATURN— We have four statements about Saturn. In Udyoga 143. 8 we read,¹⁷⁸⁷ 'A refulgent and malignant planet, Saturn, afflicts the nakṣatra presided over by Prajāpati (i. e. Rohini)'; Bhīṣma 2.32 states, 'Saturn afflicts Rohini'; Bhīṣma 3.14 says, 'the nakṣatra presided over by Bhaga is covered and afflicted by Saturn'; Jupiter and Saturn are near Viśākṣā (Bhīṣma 3.27 considered above). In the first three passages the root 'pid' occurs and therefore it is possible to argue that some kind of aspect (*dṛṣṭi* or *redhā*) of the nakṣatra mentioned in the text is meant. But in the third passage both 'ākramya' and 'pidyati' are used about the same nakṣatra. This makes that passage inexplicable in the usual way. The 'prajāpatya nakṣatra' must be Rohini as in the 2nd passage Rohini is expressly named. All authorities agree that Prajāpati is the deity of Rohini. 'Prajāpatya nakṣatra' cannot be taken to mean Mūla, since the presiding deity of Mūla is 'pitarah' in Tai. S. IV. 4. 10. 1-3 and Nirṛti (in the Tai. Br. I 5. 1 and in the Vedāṅga-jyotiṣa) and Prajāpati only in some later works. Bhaga is the presiding deity of Uttara Phalguni in the Tai. S. IV. 4. 10. 1-3 and Tai. Br. I 5. 1, and III 1. 1, while in the Vedāṅga-jyotiṣa (Rgveda, verse 25), Viṣṇu Dh. 8. (78. 16), Śān. Gr. (I. 26. 9, SBE vol. 29 p. 53) Bhaga is the deity of Purvā Phalguni. The 4th passage about Saturn being near Viśākṣā has been already dealt with under Jupiter.

1787. गजपातं हि नक्षत्रं ब्रह्मर्षिणो महापुत्रिः । इमैश्वरः पीडयति पीडयन् माणि-
नोऽपिनाम । उद्योग 143. 8; रोहिणीं पीडयन्नेव रिपवो राजन् इमैश्वरः । भीष्म 2. 32;
यस्य नक्षत्रमाकाशं सूर्यपुत्रेण पीडयते । भीष्म 3. 14.

The above detailed statement about the astronomical passages of the *Mahābhārata* will induce any unbiased reader who has no axe to grind that they are hopelessly inconsistent and that no certain chronological conclusion can be drawn therefrom. In the above discussion I have generally not cited the various explanations indulged in by several scholars, as that would have involved me in a very lengthy discourse without any adequate benefit. To me it appears probable that the final redactor of the *Mahābhārata* had two or more sets of astronomical data about the war before him and without trying to examine and sift them he included them all in his work. The *Bhārata-sāvitri* probably represents one (and a later) tradition about the positions of the planets at the time of the war. As I hold that either the *Mahābhārata* passages on the positions of the planets were interpolated at a very late stage or are hopelessly inconsistent I deem it unnecessary to enter upon an examination of the mathematical calculations made by several scholars to find out the date of the *Bhārata* war from the shifting of the solstices and the position of the planets.

Since only 5046 years have elapsed (in 1945 A. D.) from the beginning of the Kali age and as Kaliyuga extends to 432000 years according to Paurāṇic computations we are just on the threshold of the Kaliyuga and it is beyond one's comprehension to visualize what will happen towards the end of the vast period of about 427000 years that are still to pass before Kaliyuga ends. It is very small consolation to read in the *Purāṇas* in a prophetic strain that at the end of that colossal period Viṣṇu will be incarnated as Kalkin in a village Śambhala, will destroy all Mlecchas, śūdra kings and heretics and will establish dharma, so that the Kṛta age will then be ushered in. Here again as in almost all matters there are differences in the legend. The *Vāyu* (58. 75-90) and the *Matsya* (144. 50-64) state that it will be Pramati Bhārgava who will be the *avatāra* of Viṣṇu and uproot the Mlecchas, heretics and śūdra kings, while *Vāyu* 98. 104-110 and 99. 396-7, *Vanaparva* 190. 93-97, *Bhāgavata* XII. 2. 16-23 state that Kalkin will conquer the Mlecchas, will become a universal emperor (*cakravarthi*) of the *dharma-vijayin* type and will start the Kṛta age. In some passages he is called Kalki (nom. of Kalkin) as in *Vanaparva* 190. 93, *Brahma* 213. 164, *Vāyu* 99. 396, *Matsya* 47. 248, *Nṛsinha* 54. 3; while in others as Kalkiḥ (nom. of Kalki) as in *Vāyu* 98. 104, *Kalki* 2. 28, *Bhāgavata* XII. 2. 16, *Matsya* 47. 251. In

some passages he is said to be the son of a brāhmaṇa Viṣṇu-yaśas who will be the head^{178a} of the village called Śambhala (Bhāgavata XII. 2. 16, Viṣṇupurāṇa IV. 24. 26, Agni 16. 8, Nṛsinha 54. 3, Kalkipurāṇa 2. 34), while in other passages he is himself styled Viṣṇu-yaśas (Vāyu 98, 104, Vanaparva 190. 93, Brahma 213. 164, Viṣṇudharmottara I. 74. 40).^{178b} In some places

178a. सम्भलसामुद्रवर्ष काङ्क्षणस्य म्हात्मनः । भवमे विष्णुयशसः कल्किः यादवै-
ल्लिपतिः । अन्धमासुषमाकृष्ट देवदत्तं जलपतिः । अस्मिन् साधुद्वन्द्वमर्ष्यस्तुष्टान्वितः ।
पद्मवर्णिर्भगवत्कल्किर्धर्मपतिरिहः । कृतं सविपति तदा प्रजावृत्तिश्च सात्त्विकी ।
मातुल XII. 2. 16-23.

178a. Various efforts have been made about finding germs of history in the legend of Kalkin. In I. A. vol. 48 pp. 123-128 Prof. H. B. Hyde tries to show how Jain authorities about Kalkin are conflicting. Mr. K. P. Jayaswal in I. A. vol. 46 (for 1917) p. 143 holds that Kalkin must be identified with the great hero Yaśodharman, who ruled over India from the Brahmaputā to the Western Ocean and from the Himālaya to Mahendāra and who conquered the Hun Mihirakula and made him pay homage to his feet as stated in the Mandasor Inscription (vide Gupta Ins. p. 149). Prof. Pathak on the other hand relying upon certain Jain sources identifies Kalkin with Mihirakula himself (I. A. for 1918 at p. 19). Otto Schrader in Brahmasiddhi vol. I. pp. 17-27 discusses how the names Kalkin or Kalki came to be given to the saviour of India from Mlecchas, heretics and the like. Kalka means 'silt' or 'sediment' and Karka means 'a white horse'. Therefore he thinks that Kalkin is a form of *karkin* (one riding a white horse). Vide also N. I. A. vol. IV. pp. 337-343 (on Kalki from the Kalkipurāṇa). It is probable that the dismal accounts of Kaliyuga were put forth in the first centuries of the Christian era when the ancient varṇa-dharma had suffered a great set-back owing to the ascendancy of Buddhism and Jainism and the invasions of foreigners like the Sakas and Hūnas, that when Yaśodharman defeated the great Hun invader Mihirakula, people believed that the dark ages were at an end and that an era of perfect dharma was at hand. That Mihirakula was a most ruthless and blood-thirsty invader who in his long career of 70 years slaughtered myriads of men and women is stated by the Rājatarāgini I. 310 (which speaks of him as *trikotīhan*) and 322 (which narrates that he slaughtered three crores of women of respectable birth together with their husbands, brothers and sons). Hiouen Tsiang (Beal's B. R. W. W. pp. 171-172) narrates that Mihirakula either slaughtered or made slaves of nine lakhs of people in Gandhāra. Passages in a prophetic vein were added about the time of Yaśodharman to those already existing about the decline of dharma in Kaliyuga. This will of course necessitate that all passages about Kalkin in any work whatever were put in later than about 530 A. D. There are two theories as to who defeated Mihirakula. Hiouen Tsiang's account gives the name of the victor as Bālāditya of Magadha (vide Beal's B. R. W. W. Part I. pp. 167-171). On the other hand there are three inscriptions, the

(Continued on the next page)

he is said to have already flourished (Vāyu 98. 111, Matsya 47. 255), in other places the texts employ the future (Vāyu 99. 396, Bhāgavata XII. 2. 16). This last discrepancy is probably due to the fact that the writers sometimes forget their role of prophets. Further, it has to be remembered that according to the Purāṇas the four yugas (and therefore the Kalki *avatāra*) have been repeated again and again. The Kalki-purāṇa (I. 2. 33 and I. 3. 32-33) states that Kalki was a contemporary of Viśakhayūpa king of Mahismati, while the Vāyu (99. 312-314), Matsya (272. 4) and Viṣṇu (IV. 24) state that Viśakhayūpa was the 3rd of the Pradyota dynasty that preceded the Śiśunāga dynasty. Though the Kalki-purāṇa several times uses the past tense about Kalki, yet at the very beginning it says (I. 10) that what is narrated is an *ākhyāna* (story) of the future. It is interesting to note that in the Parnāparvata-grahana-ākhyāna^{1788b} of Jayarāma composed about 1673 A.D. Bahlolkhan,

(Continued from the last page)

Gwalior stone Inscription of Mihirakula (Gupta Ins. No. 37 p. 161), the Mandasor stone Pillar Inscription of Yasodharman (Gupta Ins. No. 33 p. 142), and the Mandasor Stone Inscription of Yasodharman Visnucardhana (Gupta Ins. No. 35 p. 150) in none of which is Bālāditya referred to. But in the Sarnath Stone of Prakāśāditya, son of Bālāditya, another Bālāditya is referred to (Gupta Ins. No. 79 p. 284). In the Mandasor Stone Pillar Inscription (Gupta Ins. p. 147) occur these words relating to Mihirakula 'नीचैलेनापि वर्य प्रगतिभुजपराजर्जनाङ्घ्रिदुर्मर्ना युवायुषीपहारे मिहिरकुलहृत्पमाचितं पादुमुमम्'. In the Mandasor Stone Ins. (Gupta Ins. No. 35 at p. 153) lines 4 and 5 read अथ वरति चरन्तु श्रीविश्वोर्मनामा । आजो जिनि निजपते जगती पुनश्च श्रीविश्वोर्मननराधिपतिः समुद्र । Dr. Fleet held that Yasodharman and Visnucardhana were different, but the reasons he assigns are unconvincing and Jayaswal appears to be right in holding that Visnucardhana is the same as Yasodharman (in 'Imperial History' pp. 39-41) and that Visnucardhana was the overlord of Bālāditya. It appears likely that the compilers of the extant Purāṇas combined the two principal parts of the two names Visnucardhana and Yasodharman and that the conqueror of the Mlecchas was said to be Visnucardha. Vide I. H. Q. vol. XII p. 331 and vol. XV pp. 302-306 for Yasodharman, Visnucardhana and Mihirakula and Dr. R. G. Banik in 'History of North-East India' (1934) pp. 97-101 (who holds that Yasodharman and Visnucardhana were two different Kings), Fargiter's 'Ancient Indian tradition' and 'Dynasties of the Kali age' and Dr. Pradhan's 'Chronology of Ancient India' may be read with advantage in connection with the historic material in the Purāṇas.

1788b. श्रुयते किल सिन्धुनां शास्त्रे कश्चिद्दुदाहृतम् । काली विष्णुसाराणां दशमः सम-
विपत्तिः । उल्लसते तेन सर्वत्र । पार्श्वं पावतमण्डलम् । सर्वत्र कलिर्नरतावदसावधे समावृतः ।
दुतो वै प्रतिभारपस्मान्यतोऽस्मिन्निधनोद्यतः । पण्डितपर्वतग्रहाणमयान V. 6-8, published
by भारत-इतिहास-संशोधक-मण्डल at Poona, 1923.

commander-in-chief of the Bijapur army, is made to say to Khawaskhan, the Vazir, as follows, 'In the Hindu śāstras some say that Kalkin, the 10th avatāra of Viṣṇu will be born and he will destroy the hordes of Yavanas. Shivaḥ appears to be the first harbinger of that Kalkin'.

Even though the Purāṇas are carried away by their over-zeal in condemning the moral and physical decline of the Kali age, almost all of them exhibit no verses about matters forbidden in the Kali age. We have to see when the topic of *Kalivarjya* attained prominence and what the matters are that were once practised by people without objection and that later on came to be prohibited or condemned.

The Āp. Dh. S. (II 6. 14. 6-10) condemns the practice of giving all or most of the ancestral property to the eldest son as opposed to śāstras. The Āp. Dh. S. (II 10. 27. 2-6), after referring to the view of some that a woman when being married is given to the whole family of the bridegroom, condemns the practice of *niyoga*.¹⁷⁸⁹ Both these practices (of *udbhāraṇabhāga* and of *niyoga*) are among those included in the texts on *Kalivarjya*. Among the earliest references in the smṛtis to practices once current, but forbidden in the Kali age is a passage of Brhaspati quoted by Aparārka p. 97, where *niyoga* and the numerous secondary sons are said to be impossible owing to the decadence¹⁷⁹⁰ of spiritual power among men of the Dvāpara and Kali ages. Aparārka p. 739 and the D. M. quote a passage of Śaunaka to the effect that sons other than the aurasa or dattaka are not allowed in the Kali age¹⁷⁹¹. Prajāpati (verse 151) refers¹⁷⁹² to the ancient practice of offering meat and wine in śrāddhas, but prescribes that these should be eschewed in the Kali age. Vyāsa¹⁷⁹³ quoted in the *Nirnayasindhu* and other works forbids

1789. सगोत्रस्थानीयां न परेण्यः समाचरति । कुलाप हि श्री पद्वीपत इत्युपदिशति । तद्विद्विषयैरुपदिशतिपक्षम् । अगोत्रिष्ठं हि परत्वं पापेः । तद्व्यतिक्रमे कृतं पुनश्चमोर्नरकः । अप. ध. सू. II. 10. 27. 2-6.

1790. Vide H. of Dh. vol. II. p. 603 n. 1418 for the quotation.

1791. अत एव कलौ निवर्तन्ते इत्युक्तुषौ श्रीमद्वेदोक्तं चक्षोरनेनैव तं पुत्रत्वेन परिग्रहः इति । अपरां प. 739. This is cited as from आदिपरापुराण in several other works.

1792. मध्यमपदसुतं आद्ये कलौ तच्च विवर्तयेत् । मांसाद्यपि हि सर्वाणि शुभधर्मकमाह मन्त्रे ॥ मन्त्रादि 151.

1793. चत्वार्येवदशकानि चत्वार्येवदशकानि च । कलेर्येव गमिष्यन्ति तदा वेता-परिग्रहः । संन्यासस्तु न कर्तव्यो ब्राह्मणेन विज्ञानता ॥ q. by भट्टोजि in टीका on चतुर्वर्णसंज्ञिका p. 35. Vide H. of Dh. vol. II. p. 953 n. 2481 for other references to this text.

the setting of the three vedic fires and of resorting to saunhya after 4400 years of Kali. The *Laghu-Āśvalāyana*¹⁷⁹⁴ smṛti (21. 14-15) states that the two kinds of songs called *Kunda* and *Golaka* were permitted in former ages and had the *samśkāras* performed on them, but are condemned in the Kali age. *Viśvarūpa* and *Medhātithi*, it is worth noting, do not quote a single verse about *Kali-varjya*. On Yāj. III. 30 *Viśvarūpa* tries to reconcile *Parāśara* III 5 (saying that a brāhmaṇa who is learned in the Veda and keeps the sacred Vedic fires becomes free from impurity in a day) with *Parāśara* III 8 (that for ten days on impurity due to birth or death the food of that family becomes unpartakable for others). He does not accept the idea that the period of impurity is only one day for a learned man, but explains that *Parāśara* III 5 is only an *arthavāda* meant for glorifying the study of Veda and the keeping of sacred fires. Among later commentators it is stated that the narrowing down of the periods of impurity on the ground of Veda study is forbidden in the Kali age. As this explanation is not offered by *Viśvarūpa* it is not unreasonable to infer that *Viśvarūpa* was not aware of the passage on this point quoted from the *Ādityapurāṇa*. *Medhātithi*¹⁷⁹⁵ also (on *Manu* IX. 112) refers to the opinion of some that the smṛti passages about *niyoga* and *uddhāra-vibhāga* were applicable only in bygone ages, since smṛtis are restricted to certain ages (vide *Manu* I 85); but he refutes that view and explains *Manu* I 85 by saying that the meaning is that the dharmas (i.e. qualities or natures of things) change from age to age as they do from season to season. From this it is clear that he did not accept that certain practices current in one age were forbidden in others. *Vijñāneśvara*¹⁷⁹⁶ quotes a single verse which condemns the practice of *niyoga*, the giving of a special share to the eldest son and the killing of a cow in a sacrifice as not allowable in the Kali age. That

1794. संस्कारो विविधोक्तौ मुनिभिः कुण्डगोलकौ । युगान्तरे स धर्मः स्यात् कलौ निन्द्य इति स्मृतः ॥ परिशिष्टां मुनः कुण्डो यमिच्छारसमुद्भवः । गोलको विधवायां च निषिद्धः स्वात्मकौ स्मृतः ॥ लघुआश्वलायन 21. 14-15.

1795. Vide n. 1197 above for मेधातिथि's remarks दृष्टमुद्धारनिषेधः ... तदेतदुपेक्ष्यम् । Then मेधा. continues : न श्रेयविधः कालविधमः कश्चिदपि क्षुपने साधेमाता-पत्यादिनिषेधमावृण्वत् । परस्मैपदेषु कुतश्चो धर्मो इति तत्रधम एव स्यात्संवातम् । मेधा. on *Manu* IX. 112. On *Manu* I. 85 अने कुलदुर्गे धर्मोः he says : धर्मेऽशब्दो न पागादिवाचन एव किं नहि पदार्थरूपमात्रे भवेत् । ... यथा वसन्तेऽन्यः पदार्थात् स्वभावोऽन्यो धर्मोऽन्य एव यथा-स्वैव दुर्गेऽपि.

1796. Vide above p. 628 n. 1195 for the verse यथा निषेधधर्मो नो.

verse is said by the Sm. C. II. p. 266 to have occurred in the Sangraha (i.e. the work called Smṛtisangraha). The Sm. C. quotes a verse of Kratu which forbids four acts in Kali, viz. niyoga, remarriage of a married girl, killing a cow in sacrifices and the taking of a jar.¹⁷⁹⁷ The Nāradya-mahapurāṇa contains four verses about Kaliyariya stating that certain practices which were once allowed are forbidden in the Kali age, viz. sea voyage, the carrying of a jar of water, marrying a girl of a class lower than one's own, *niyoga*, killing of an animal in Madhuparka, offering of flesh in śrāddhas, the stage of a forest hermit, remarriage of a married girl when the marriage was not consummated, perpetual student-hood, human sacrifice, horse sacrifice, starting on the great journey, the sacrifice of a cow¹⁷⁹⁸. Aparārka (pp. 15, 63) quotes one verse and a half from the Brahmapurāṇa about certain Kaliyariyas viz. perpetual student-hood, the carrying of a *kamandala*, marriage with a sagotra or sapinḍa girl, the killing of a cow, human sacrifice, horse sacrifice, drinking intoxicating liquors¹⁷⁹⁹. This could not be traced to the Brahmapurāṇa, but the Prāyaścitta-tattva (p. 520) ex-

1797. ऋतुरपि । देवराज सुतोत्यसिः कृत्वा कथा न दीयते । न यज्ञे गोवधः कार्यः
कलौ च न कमण्डलुः ॥ q. in स्मृतिच. I. p. 12, महोदय's टीका on चतुर्विंशतिमत p. 49,
कलिवर्णन, folio 1, समवकाश p. 261.

1798. सप्तद्वयास्त्रीकारः कमण्डलुविधारणम् । विज्ञानामसवर्णासि कन्यावृषण-
स्तथा ॥ देवराज सुतोत्यसिर्गुरुर्देवः पशोर्वधः । मोसादने तथा आदौ वानप्रस्थाभ्यस्तथा ॥
वृत्तावृत्तायाः कथायाः पुनर्दानं वरस्य च । नैष्ठिकं ब्रह्मचर्यं च नरमेधाश्वमेधयो ॥ महाप्रस्थान-
तमने गोमेधश्च तथा मयः । एतान् प्रमादं कलिपूर्वे वज्रोनाहुर्मनीषिणः ॥ नास्तीकपुराण,
द्वितीय, 24, 13-16. These are quoted as from the बुधश्चरदीपपुराण in the ब्रह्मसंहिता
p. 112, the निर्णयसिन्धु p. 367 (reads सप्तद्वयातुः स्त्रीकारः), कलिवर्णन, folio 2
(reads मोसादाने and सप्तद्वयातुस्त्रीकारः), the स्मृतिचर्चासार p. 2 contains the half
verses सप्तद्वयाथा ... धारणम्, कृत्वा ... वरस्य च, and महाप्रस्थानतमने गोमेधश्च वृत्तावृत्तः
(but without name). The मद्. पा. p. 16 has the first half (without name)
and also the half दीर्घकालं ब्रह्मचर्यं धारणं च कमण्डलोः । सगोवाहा सपिण्डाहा विवाहो गोव-

धस्तथा । नराश्वमेधौ भयं च कलौ वर्ज्यं विज्ञानिभिः ॥ इत्यादिना महादेवोऽपराधो
सायान्पतो वर्ज्यमेवाभिहितवान् । अत्रार्थे p. 15, स्मृतिच. I. p. 12, परा. सा I. part 1
p. 133. The स्मृतिच. देमादि III. 2 (p. 666), भवनरत्न and निर्णयसिन्धु (p. 367)
read गोवाग्नातुः सपिण्डाश्च विवाहः which means 'marriage with a daughter of the
paternal aunt or with a girl who is a sapinda of one's mother i.e. maternal
uncle's daughter.' The स्मृतिच. attributes these verses to आदिविचपुराण while
निर्णयसिन्धु p. 236 ascribes them to आदिवपुराण. The कलिवर्णननिर्णय reads गोवा-
ग्नातुसपिण्डात्, notices also the reading गोवाग्नातुः सपिण्डात् and has a long note
on this, citing and refusing various views. According to the मोसादन्वयविवेक
of विश्वनाथ p. 27 even the वज्रपुराण quoted this ब्रह्मपुराण passage (reading
गोवाग्नातुसपिण्डाहा).

pressly states that these were cited from the Brahmapurāṇa in the works of Halāyudha, Śūlapāṇi and in the Gṛhastharatnākara (i.e. from about the 12th century onwards). Aparārka (p. 98) quotes another passage from the Brahmapurāṇa¹⁸⁰⁰, which condemns remarriage of women, niyoga, independence of women, on the ground that men in the Kali age are sinners. Aparārka (p. 233) quotes two verses from a smṛti (without name) the first of which prohibits six acts, viz. killing a cow in sacrifice, niyoga (of husband's brother), the performance of *sautras*, taking a water jar, use of wine (in *sautrāmaṇi*), being an ascetic (of the *paramahansa* type) and the second prohibits five, viz. human sacrifice, cow sacrifice, the taking of a *kamaṇḍalu*, niyoga, and the remarriage of a girl whose marriage has not been consummated. Aparārka (p. 233) quotes a passage from the Mārkaṇḍeya recommending the offering of a golden vessel in place of the cow in Madhuparka and stating that Bhṛgu laid down that no animal was to be sacrificed in Kali. The Sm. C. (I. p. 12) quotes a Purāṇa passage that 'the remarriage of a married woman, special share to the eldest son, the killing of a cow, niyoga and the taking of a *kamaṇḍalu*—these five are to be avoided in Kali'¹⁸⁰¹. Hemādri and the Sahyādri-khanda state, 'Agnihotra, the killing of a cow, *śannyāsa*, offering of meat in śrāddha and raising of a son by the husband's brother—these five were¹⁸⁰² to be avoided in Kali. Hemādri in Dānakhaṇḍa quotes a passage from the Garuḍapurāṇa in which seven matters are mentioned as forbidden in Kali, viz. Āśvamedha, Gosava, human sacrifice, Rājāsūya, remarriage even of a girl whose first marriage was not consummated, the carrying of a *kamaṇḍalu* and procreation of a son off a widow by her husband's brother. The Smṛtyarthasāra (p. 3) mentions twenty-six Kali-varjyas without expressly citing the name of any work. In the Sm. C. the Caturvargacintāmaṇi of Hemādri (III. part 2 p. 666), the Par. M. I. part 1 pp. 131-137, the Madanapārijāta (pp. 15-16),

1800. खनिां पुनर्विवाहस्तु देवराजद्वयसन्ततिः । स्वातन्त्र्यं च कलिदुगे कर्तव्यं न कदाचन । यतः पातकियो लोकं नराः सन्ति कलौ युगे । ऋष्यपुराण q. by अपरार्क p. 98.

1801. दुराणेषु । ऊहायाः पुनर्विवाहे उपेक्षां गोषं तथा । कलौ पञ्च न कुर्यात् शत्रु-
कार्यं कर्मकतुम् । स्मृतिच. I. p. 12. This is quoted from the आदिपुराण in the मदनमाला. Vile n. 1700 above and कलिचरणेति, स्मृतिच. (वर्णाश्रम) p. 13 quotes it as from पराशर.

1802. अग्निहोत्रं गवाक्षम् सैन्धवं पतपेयकम् । देवराजं शत्रुतोषति कलौ पञ्च विवर्त-
येत् । स्मृतिच. (वर्णाश्रम p. 176), गतिधर्मसंग्रह p. 2, सद्वादिविषय (उत्तरभाग chap. V. 64-65). The first two read अम्पायेयम्. The निर्णयसिन्धु p. 370 quotes the verse as a *śloka*.

Madanaratna (samayoddyota), the Udvāha-tattva (p. 112), the Samaya-mayūkha, the Samayaprakāśa of Mitraniśra (pp. 261-263), the Nirṇayasindhu (III, pūrvārdha at end), Bhaṭṭoji on Caturvīṃśatī-mata, the Smṛtimuktāphala (varṇāśrama p. 13), the Smṛtikaustubha, the Dharma-sindhu (pp. 357-358) and some other works quote long passages from a purāṇa (which in some of them is specified as the Ādityapurāṇa) that mentions about 50 Kalivarjyas¹⁸⁰³. There is a work called Kalivarjyavinirṇaya or Kalivarjyanirṇaya composed by Dāmodara elder brother of Nīlakaṇṭha (first half of 17th century A. D.), who in his Samaya-mayūkha refers to it. It quotes the Ādityapurāṇa, Brahmapurāṇa and other texts that are quoted here from Hemādri and other older digests¹⁸⁰⁴.

In the passage quoted the several Kalivarjyas are not arranged on any systematic basis. Here, first of all a few Kalivarjyas that have a bearing on law will be mentioned and then the rest will be taken up one after another in the order in which they appear in the extract and lastly those that do not appear in that extract will also be dealt with. The first verse states that certain actions were discarded by the wise though this was unauthorized (by śruti or smṛti) after arriving at a convention among themselves through fear of the loss of dharma (if they were persisted in), because in the Kali age there is absence of good men. The last verse and a half again state that at the beginning of the Kali great men arrived at certain conventions and discarded certain actions in order to guard the people (against harm and sin) and (it is well known) that the conventions of good men are authoritative like Veda¹⁸⁰⁵.

1. Giving a larger share of ancestral property or the whole of it to the eldest son (this is called *jyesthāṅka* or *udbhāra* or *udbhāraṁbhāga*). Vide pp. 624-631 above for this.¹⁸⁰⁶

1803. Vide Appendix for the passage.

1804. A ms. of this work existing in the Central Library at Baroda was very kindly lent to me through the Bhandarkar Oriental Institute at Poona. There are eleven folios with ten lines on each side and about 40 letters in each line.

1805. Compare Āp. Dh. S. I. 1. 1. 2-3 ' धर्मज्ञसमयः समाप्तः । वेदाश्च ' and Vas. I. 4-5.

1806. The earliest reference in English to Kalivarjya matters is found in a translation of the passage of the Samayoddyota section of the Madanaratna contained in Sir William Jones' Works vol. VIII (ed. of 1807), General Note; vide also Strange's Hindu Law, vol. II pp. 164-174 for reference in a modern work on Hindu Law to several topics of Kalivarjya.

2. Appointing the husband's brother (or a sagotra &c.) to raise issue on the wife of a sonless man. This is called *niyoga* and has been dealt with at length in H. of Dh. vol. II. pp. 599-607. It may be added here that in the K. V. N. there is a long discussion on the question whether an elder brother of the deceased could have been appointed to raise issue on his younger brother's widow and gives it as the opinion of some that he could not be so appointed, but that only a younger brother could be appointed to raise issue on his elder brother's widow. They rely on the Mīt. on Yāj. I. 68 where 'devara' is paraphrased as 'kanyān bhrātā'. The K. V. N. (folio 5 b and 6 a.) relying on Manu IX. 62 and the words of the Mīt. on Yāj. II. 127 (where Manu IX. 69-70 are cited and explained as 'devaras-tasya jyesthaḥ kaniṣṭho vā') holds that any brother whether elder or younger than the husband could be appointed.

3. The admission of several kinds of secondary sons other than the aurasa and the dattaka. For this vide above pp. 647-653.

4. Remarriage of widows. This subject has been dealt with in H. of Dh. vol. II. pp. 608 ff. Some texts such as Vas. 17. 74 make a distinction between the remarriage of a woman whose marriage was not consummated and of a woman whose marriage was consummated, remarriage being allowed in the first case but not in the 2nd. The Kālvārjya texts forbid remarriage in both cases.¹⁸⁰⁷

5. Intercaste marriages. This subject has been treated of in H. of Dh. vol. II. pp. 447-451. It has been shown by me above (pp. 599-600) that the decisions in 46 Bom. 871 and 55 Bom. 1 are based upon a misunderstanding about the real views of Nīlakaṇṭha.

6. Marriage with sagotra girls or with girls that are sapindas of the mother (such as the maternal uncle's daughter). Vide H. of Dh. vol. II. pp. 452-478 for prohibition on the ground

1807. पाणिग्रहे धृते बाला केवलं मन्त्रसेवकाः। सा चेदुत्तपोनिः स्यादुतः संस्कार-
मर्हति ॥ बसिष्ठ 17. 74. The half verse बालिकासुतयोर्नोक्तुः परेषामपि संसृतिः
refers to both kinds of widows viz. बालिका (whose marriage is not consum-
mated) and सुतपोनि (whose marriage is consummated). The reading of
हेमाद्रे and कलिकर्ग्वि. (folio 1) 'बालिकासुतयोर्नोक्तुः (or—एवाद्य) is to be
understood as referring only to the first kind (बालिका चासौ असुतपोनिश्च).
The निर्णयसिन्धु (p. 368) reads बालायाः सुतपोन्यास्तु.

of sapinda relationship, pp. 497 ff. for prohibition on the ground of gotra and pp. 458-463 for marriage with maternal uncle's daughter. The custom of marrying the maternal uncle's daughter has persisted to this day in many castes in spite of the inclusion of it among Kalivarjyas. An inscription at Nāgarjunikonda (3rd century A. D.) shows that Virapurusa-datta, son of Śāntamūla, married three daughters of his paternal aunts (E. I. vol. XX, p. 1).

7. Slaying a brāhmaṇa who comes as an ātatāyin in a properly conducted fight. Vide H. of Dh. vol. II pp. 148-151 and p. 517 above for this subject.

8. Awarding of fines against witnesses who depose in disputes between father and son.¹²⁰⁸ It has already been seen (p. 299) how ordinarily suits between husband and wife, father and son were not encouraged in ancient India. But when such a dispute came to the king's notice he could take action *mo motu*, as Nār. includes 'pitsputra-vivāda' among the miscellaneous matters (prakīrṇaka verse 3) which the king was to set in motion. Even in ancient times this rule must not have been strictly enforced. As time went on and separation of father and son became frequent the rule must have appeared to be unreasonable. Vide Mīt. on Yāj. II. 32 referred to above in n. 418. Yāj. II. 239 (= Matsya 227, 198) prescribed a fine of 3 paṇas for those who (instead of composing the quarrel between father and son and being able to do so) undertake to be witnesses. Viśvarūpa read 'a fine of two hundred paṇas'. Viṣṇu Dh. S. V. 120 prescribes a fine of ten paṇas. This shows that at the time of the Matsyapurāṇa this act was probably not included among Kalivarjyas.

9. Taking (or stealing) of corn even from one whose actions are lowly (i. e. even from a śūdra), when a brāhmaṇa has been without food for six times (i. e. three days). Gaut. 18. 28-29, Manu XI. 16 and Yāj. III. 43 provide that when a brāhmaṇa cannot earn his maintenance in a season of distress even in any one of the ways indicated in Yāj. III. 42 and has been hungry for three days he may steal or take away one day's food even from a low person such as a śūdra. It should be noted that this Kalivarjya text pointedly repeats the very

1208. वितातुवर्गोर्विरोधे साक्षी न विहितः। अस्तिद्वेनैव दण्ड्यस्तेन कार्यापणान्पञ्चान्तरे तिष्ठन्तोऽप्यवदत्तं दाप्यः। सङ्कलितसौ q. by अपराध p. 824.

words of Manu XI. 16 'bhaktāni sad-anaśnatā ... hartavyam hinakarmaṇaḥ'. In ancient times theft of such a minor nature was permitted when the brāhmaṇa was famished. But later times took a stricter view of the matter.

10. 'The admission to intercourse of a brāhmaṇa who undertakes a sea voyage, even though he may have performed the penance prescribed for the same' (I. 7 in the appendix). Here the word used is 'dvijasya'. It may mean either any person of the three higher castes or a brāhmaṇa. If a man who has made a sea voyage took prāyaścitta he expiated only the sin, but did not become fit, according to this dictum, to be associated with by others. Whether the Vedic Aryans knew the sea has been doubted. Vide 'Vedic Index' on 'samudra', vol. II. pp. 431-433. The Nirukta II. 10 refers to the fact that a doubt arises whether the word 'samudra' in a particular vedic verse refers to the sea or to the sky. In some verses as in Rg. X. 98. 5 'he discharged divine ruin waters from the higher to the lower samudra' both the meanings of 'samudra' (viz. sea, sky) are pointedly brought out. Vide also Rg. VII. 6. 7 (ā samudrād-avarād-ā paramāt). In Rg. VII. 95. 2 Sarasvatī is mentioned as going from the mountains to the sea. In Rg. X. 136. 5 the two seas, Eastern and Western, are mentioned (ubhau samudrāvā kṣeti yasca pūrva utāparaḥ). In Rg. VIII. 6. 4 it is said, 'all people bend down to him, as the sindhus (rivers) flow to the Ocean.' Rg. I. 116. 4-5, X. 39. 4 and X. 143. 5 refer to the story that Aśvins saved Bhujyu from the waters of the sea.¹⁸⁹ The Atharvaveda XI. 2. 25 refers to eastern sea and northern sea. There is no doubt that in the Brāhmaṇas the sea was well-known. The Tai. Br. II. 2. 5. 6 remarks, 'there is no end to desire and also to samudra' (neva hi kāmasyāntostī na samudrasya). The Ait. Br. (40. 2) remarks 'just as the sea stands surrounding the earth' (tābhi rājānam pariṅghya tiṣṭhātī samudra iva bhūmim). It has already been seen that among the five practices peculiar to the north the Baud. Dh. S. (I. 1. 22) enumerates sea voyage (samudra-samyāna) as the last and condemns it. Baud. (II. 1. 51) places sea voyage at the head of grave sins (pātanyāni) along with misappropriating a brāhmaṇa's wealth kept as a deposit. The Mit.

189. Vide 'Vedic Hymns' by Max Müller (S. B. E. vol. 32 pp. 57-62) for a note on the question whether the Indians of 'the Vedic age' knew the surging sea (terrestrial).

on Yāj. III. 288 quotes the sūtra of Baud. Manu (III. 158 and 166-167) provides that a brāhmaṇa who had been on a sea voyage was sinful and was not to be invited at a śrāddha. But it is clear that Manu does not say that such a brāhmaṇa altogether loses caste or that he becomes altogether unfit to be associated with; all that Manu provides is that such a brāhmaṇa became unfit for invitation at a śrāddha. The Aśvanasasmṛti (IV. pp. 525-526) declares that those who sell the Veda, who marry a widow, who undertake a sea voyage are *patita* and are not to be invited at a śrāddha. These passages show that the prohibition against sea voyage affected only brāhmaṇas and even then they did not apparently become altogether unfit to be associated with. That brāhmaṇas crossed the ocean and went to such distant countries as Siam, Cambodia, Java, Sumatra and Borneo can be easily proved¹⁸¹⁰. E. I. vol. 17 p. 314 gives references to inscriptions from Borneo to show that brāhmaṇas from India migrated to that country about 400 A. D. That kings and merchants undertook sea voyages is also clear from several considerations. The Bāveru Jātaka (vol. III No. 339, Fausbøll) tells us that merchants from Benares went to Babylon in order to sell Indian goods. The 'Questions of Milinda' S. B. E. vol. 36 p. 269 refers to a ship-owner voyaging by sea to distant countries¹⁸¹¹. The Rājataranginī refers to the sea voyage of an envoy of king Jayāpīḍa of Kashmir to Ceylon (IV. 503-506). Manu VIII. 157 prescribes that the king should allow that rate of interest which those who are adepts in sea voyages and land journeys and who understand what is required to be the interest at certain times and in certain

1810. Vide Dr. R. C. Majumdar's 'Champa' (1927) and 'Savarnadvīpa' (1937 and 1938): 'Indian influence in the Literature of Java and Bali' by Himansu Dhusana Sarkar; 'India and Java' by Dr. Bijan Raj Chatterjee (1933); G. Gorer's 'Bali and Angkor'; 'Sanskrit texts from Bali' edited by M. Sylvain Levi in G. O. S.; Annual Bibliography of Indian Archaeology, vol. IX. pp. 39-50. The standard writings of Brandes, Bergaigne, Kern, Krom, Parmentier and other scholars on Java, Champa and other countries of the Eastern Archipelago are not mentioned here, as they are not in English. They are referred to by Dr. Majumdar and others.

1811. The whole passage is interesting and may be set out here: 'Just as a shipowner, who has become wealthy by constantly levying freight in some seaport town, will be able to traverse the high seas and go to Vadga or Takkola or China or Sovira, Surat or Alexandria or Coromandel coasts or Further India or any other place where ships do congregate' &c. (S. B. E. vol. 36 p. 269).

places determine to be the proper one. Yāj. II. 38 provides for very high interest (30 per cent per month) from those who engage in trade by sea. Nār. IV. 179 says that a trader (*samudra-vanik*) who makes sea voyages is not a proper witness. The Vāyu (45. 78-80) and other purāṇas state that Bharatavarṣa¹⁸¹² has nine divisions called *dvīpas*, all of which are separated from each other by the sea and are not (easily accessible, that Jambudvīpa (India proper) is the 9th dvīpa and the other eight are Indra, Kaseru, Tāmraparvat, Gabhastinat, Nāga, Saumya (Siam?), Gandharva, Vārūna (Borneo?). Therefore Bharatavarṣa according to Paurāṇic Geography included modern India and also Greater India. None of the ancient works at least says anything against sūdras undertaking sea voyages; but now even sūdras, probably in their desire to emulate the brāhmaṇas and rise higher in social esteem, think that sea voyage is forbidden to them also.

When during the latter half of the 19th century some brāhmaṇas went to England on a political mission or for study and returned to India, the question whether after taking the appropriate *prāyaścitta* those brāhmaṇas could be associated with fully as before was referred to many orthodox and learned *Pandits* (such as the late Tārānātha Tarkavācaspati) and it is creditable to the *Pandits* and gratifying to note that many of them came to the conclusion that they could be associated with by others. The two principal texts referred to were those of the Brāhan-Nārada-purāṇa (note 1798 above) and the one from the Ādityapurāṇa translated at the head of this particular Kalivarjya. Very interesting and hairsplitting arguments and explanations were advanced by the learned *Pandits* in 1872. Some of them may be noted here. As regards the Nāradya passage, it is argued that only that seavoyage is forbidden in the Kālī, which was a righteous act (*dharma*) in former times. In Parāśara-smṛti XII. 58 the following *prāyaścitta*¹⁸¹³ is prescribed for brāhmaṇa murder: 'the sinner should

1812. भारतवर्षस्य पदस्य नवमेधाः नवविंशतिः । समुद्रान्तरिता ज्ञेयास्ते स्वभूम्याः परस्परम् ॥ इन्द्रद्वीपः कसेरुश्च ताम्रपर्वी नमस्तिमान् । नामद्वीपस्तथा सोम्यो गन्धर्वस्तथा वायुः । अर्धं तु भवमस्तेषां द्वीपः सागरसंयुतः । वायु 45. 78-80. The same verses (except the half verse समुद्रान्तरिता &c) occur in Matsy 114. 7-9 and Brāhma-purāṇa 19. 6-7.

1813. स्तुतेषु कथापद्येष्वेवः पुण्ये भवतां तु सागरम् । दृशपोजनविस्तीर्णं ज्ञातपोजनमागतम् ॥ रामचन्द्रसमाधिदं नलसज्जपसज्जितम् । सेतुं दृष्ट्वा समुद्रस्य अङ्गारपत्रं वषट्कारं कुरुते XII. 69-71.

be directed to perform the penance of going to the *setu* on the ocean; he should beg for alms on the road to the *setu* from men of the four classes that are free from improper acts, should walk barefooted and without umbrella, should declare his sin in all towns, villages and hamlets of cowherds on the way while resting there or in forests, sacred places and rivers and after reaching the sea and on seeing the *setu*, 100 yojanas long and 10 yojanas broad, constructed with heaps of stones at the bidding of Rāma by Nala he will get rid of the sin of brāhmaṇa murder'. Here brāhmaṇa murder being a most heinous offence it cannot be supposed that a mere sight of the *setu* from land would absolve the sinner and the words about the length and breadth of the *setu* would be otherwise meaningless. Therefore what is meant is that he must undertake a sea-voyage and go along the whole length and breadth of the *setu* in a vessel. Such a voyage was religious conduct in former ages, but in Kali this is forbidden. The word 'holding a *kamaṇḍalu*' (which also was prescribed as *dharma* in former ages) conveys that a similar or analogous practice is referred to in the immediately preceding words. The words '*dvijaṇyābdhau &c.*' are to be interpreted as follows: '*nauyātuh*' is the genitive singular of '*nauyatr*'. The affix '*tr*' is not the ordinary '*tr*' but it is '*trn*' used in the sense of 'one who habitually does a thing', according to Pāṇini III. 2. 134-135.¹⁸¹⁴ Therefore the words of the *Ādityapurāṇa* apply only to a *dvija* who habitually engages in a sea voyage either as a trader or as a helmsman or sailor. When Nārada (*Dāyabhāga* 21) states that even an *aśura* son who is hostile to his father or who is *patita* (guilty of one of the five great sins) or is impotent or is '*apayātrita*' he does not get a share of ancestral wealth, the *Vyavahāramayūkha* explains the last word as 'one who goes to another continent (other than *Jambudvīpa*) through mid ocean by means of a vessel for purposes of trade' and relies on this passage (*dvijaṇyābdhau &c.*) for support. So according to the author of the *V. Mayūkha* only that *dvija* who constantly undertakes sea voyages for trade is here declared to be unfit for social intercourse though he may have taken a *prāyaścitta*, and not one who casually or once in a life undertakes a sea voyage. No text prescribes a *prāyaścitta* merely for going in a vessel on the sea. If that were intended in this passage the text would have read differently viz. '*samudre naugamaṇḍbhāve &c.*' Even *śiṣṭas* have been

1814. भाष्येन च प्रतिज्ञातं दर्शनं तस्याप्युक्तं । कुत्र । पाणिनि III. 2. 134-135.

crossing the sea to Ceylon for purposes of trade. In dramas like the *Ratnāvalī* (where the *kāṇḍikā* Bāhuvya undertakes a sea voyage and a merchant from Kausāmbī is said to have gone to Ceylon) and in romances like the *Dasakumāracarita* frequent references are made to sea voyages to Ceylon and other countries. What is aimed to be hit when *prāyaścitta* for sea voyage is prescribed is the fact that on such voyages a man may give up for long such daily duties as the performance of *sandhyā* and may have come in very close contact with *mlecchas* as regards food etc. If he has done these two, then only he is not fit for intercourse even though he may have undergone a *prāyaścitta*. If he performs his daily duties wherever he may dwell and does not come in too close a contact with *mlecchas* he may have to perform no *prāyaścitta*, much less would he become unfit for social intercourse. The view of Medhātithi on *Manu* II. 23 that any country by itself is not unfit for the residence of an *ārya*, that if *mlecchas* overrun a country in India and permanently reside there it may become a *mlecchadeśa*, that even a *mleccha* country, if it be conquered by an Indian king and if the system of the four *varṇas* be introduced therein, would be a fit one for the performance of Vedic sacrifices, has already been noted (in H. of Dh. vol. II p. 16). It has to be remembered that the *Ādiparva* (85. 34) states that *mlecchas* and *yavanas* sprang from Anu and Turvasu, sons of Yayāti. The *Sabbāparva* notes that Bhīma made *mlecchas* dwelling beyond the seas and in Anūpa bring tribute (30. 25-27) and that *mlecchas* came to see the Rājāsūya sacrifice along with Bhagadatta of Prāgyotisa (*Sabbā* 34. 9-10). The following propositions follow from the above discussion: (1) As the word 'dvija' is used a *śūdra* or a person of the mixed castes (*śūnikṛṣṇa-jāti*) does not become unfit for social intercourse even by habitually undertaking a sea voyage, but he may have to undergo a *prāyaścitta*; (2) a *dvija* who casually undertakes a sea voyage to a place outside India either at the king's bidding or for any other purpose has to undergo a *prāyaścitta*, but if he does so he becomes fit for social intercourse; (3) a *dvija* habitually undertaking a sea voyage for trade or as a sailor would become unfit for intercourse even after undergoing *prāyaścitta*. *Manu* IX. 314, when enlarging upon the devastating power of *brāhmaṇas*, mentions that the sea was made undrinkable by *brāhmaṇas*, which, according to Medhātithi and other commentators, has in view the story in *Śānti* 343.60-61. It is difficult to say whether this story had any influence in leading to the prohibition against sea voyage.

The *Smṛtikaustubha* explains that 'samudrayātrā' means 'tirthayātrā' i.e. pilgrimage to holy places beyond the sea and that is forbidden here. But this seems to be wrong, as stated by Kṛṣṇabhāṭṭa on the Nir. S. The latter says that expiation is to be undergone only where a sea voyage is undertaken from worldly motives, but where a sea voyage has to be undertaken for reaching a holy place like the Śāṅkhoddhāra-tīrtha, it is an inseparable part of the pilgrimage and therefore there is no necessity to undergo a *prāyaścitta*.¹⁸¹⁵

11. 'The initiation for a *sattrā*' (I. 8). *Sattras* were sacrificial sessions the duration of which varied from 12 days to a year, 12 years or even more. Only brāhmanas could perform them (Jai VI 6. 16-23). Acc. to Śabara on Jai. VI 2. 1 persons who engaged in them must not be less than 17 nor more than 24. All of them were both sacrificers (*yajamāna*) as well as priests. Vide H. of Dh. vol. II pp. 1239-1246 for *sattras*. The prohibition against engaging in *sattras* is a clear indication that people had become tired of the ancient Vedic sacrifices, of the great demands they made on time and wealth and had begun to prefer other and easier modes of worship.

12. 'Carrying a jar of water' (I. 8). The Baud. Dh. S. I. 4 devotes numerous¹⁸¹⁶ *sūtras* (1-27) to the subject of carrying an earthen or wooden jar full of water. Every *snātaka* was always to carry a jar of water from which he was to take water for *śauca*. He was to wash it with water and rub it with his hand. This was declared to be equal to *pariyagnikarma* (encircling with fire for purification, vide H. Dh. vol. II p. 1120 n. 2501). He was not to go to another's house or to the village boundary or on a journey without the jar. Vaa. 12. 14-17, Manu IV. 36, Yaj. I. 133 contain similar provisions. Viśvarūpa explains that the *snātaka* himself need not carry it and that it may be carried for him by another. It was an encumbrance, gave rise to unhygienic and unclean habits and so gradually it came to be dispensed with. This practice was regularised by declaring that in the Kali age a water jar was

1815. एतच्च वापश्चित्तं रागयति समुद्रयान एव । शङ्खोद्धारविशेषे वात्राविधिनास्तृतीयकं समुद्रयानमती दोषान्नावाह वापश्चित्तमित्यस्य च विस्तरः । कुल्लभ ०० नि. सि. p. 1238.

1816. अथ कमण्डलुचर्चासुपदिशति । ... तस्माच्चौचं कृत्वा पाणिना परिमृजितं परंप्रिकरणे वि तत् । ... अथाप्युद्धारमिति । कमण्डलुर्दिनसतीनां औचादे विहितः पुर । अक्षणा मुनिमुकपेयं तस्मात्तं धारयेत्सदा ॥ ततः औचं ततः पानं सन्त्योपासनमेव च । निर्विशङ्केन कर्तव्यं तद्विष्णुदेव आत्मनः । ... पितृदेवादिभिरपि तस्मात्तं परिकर्तव्यं । तस्माद् दिना कमण्डलुना ताभ्यां वनेषु सीमान्ते न गृहाद् गृहम् । बी. ध. सु. I. 4. 1, 3, 18-19, 24, 25.

not to be carried at all. The Madanapārijāta (p. 16) explained that 'kamandaluvidhārāṇa' refers to perpetual studenthood, but this explanation cannot be accepted, because in the Nāradyapurāṇa (note 1798 above) both are mentioned separately. The K. V. N. (folio 3 a) notes that some explained 'kamandaluvidhārāṇam' as standing for 'dirghakālam brahmacaryam' (studenthood for long periods).

13. 'Starting on the Great Journey' (1. 9). The Bṛhan-Nāradya-purāṇa (pūrvārtha 24. 16) also forbids this. According to Manu VI. 31 and Yāj. III. 55 a forest hermit, when he suffered from an incurable disease and could not perform the duties of his order, was allowed to start towards the north-east on the Great Journey (mahāprasthāna) till the body fell down to rise no more. Similarly, a man guilty of brāhmaṇa murder was allowed to meet death at the hands of archers or to throw himself head foremost into fire. Vide H. of Dh. vol. II. pp. 924-928 for Mahāprasthānagamana. Aparārka¹⁸¹⁷ (p. 877-879) quotes long passages from the Ādipurāṇa to the effect that if a man suffering from an incurable disease starts on the Great Journey in the Himālaya or commits suicide by entering fire or water or by falling from a precipice, not only does he not incur sin, but on the contrary he goes to heaven. It is rather inconsistent that the Ādipurāṇa (or Ādityapurāṇa) should in one place extol the starting on the Great Journey and in another place should forbid it in the Kali age. The K. V. N. cites the instance of the Pāṇḍavas that are said to have started on the Great Journey. This makes one suspicious about the authenticity of the passages on Kali-varjya quoted from the Ādityapurāṇa by some and from Ādipurāṇa by others.

14. 'The killing of a cow in the sacrifice called Gosava' (1. 9).

There were various occasions on which in ancient times a cow was sacrificed. The Anūbandhya cow killed at the end of the Udayantiya īsti in Agniṣṭoma has been referred to above (on p. 627 n. 1196). In the Madhuparka which was offered

1817. तथा चाविद्वुराणम् । पुत्रिभिरप्येवमहारोमैः पीडितस्तु पुनस्तपवि । अविशेज्जलमे
हीनं करोत्यनक्षमं तथा ॥ अमापनोपराजिं वा भृगुपतनमे तथा । मच्छेत्स्महापथं वापि तुषार-
मिरिमादरात् ॥ यथाग्न्यदक्षकृपां देवतार्थं करोति वा । स्वयं देहमिनाक्षस्य काले प्राप्ते म्हामतिः ।
उत्तमाग्न्यामुपाहोषाक्षान्मयाति भवेत्कचित् । q. by अपराज् p. 877 and by परा. मा.
I. 2. 228 (as from आदित्यपुराण). अपराज् (p. 879) further quotes 'महाकृत्यान्मयात्रा
च कर्तव्या इति नोपरि । आश्रित्य सत्त्वं वैरे च सदा स्वर्गं वृत्ता च सा ।'

to an honoured guest a cow was either killed or let loose at the desire of the guest. Vide H. of Dh. vol. II pp. 543-545. A cow was killed in one of the three or four *aptakū śrāddhas* (vide Khādira gr. III. 41, Gobhila gr. III. 10. 16). Āp. Dh. S. II. 7. 16. 25 states that if cow's flesh is offered in śrāddha for the *pitrs*, the latter are gratified for one year. There was a sacrifice called Gosava or Gomedha, that was an Ukthya in which the fees were ten thousand cows and which according to some could be performed only by a vaiśya (Kāt. Śr. 22. II. ¹⁸¹⁸ 3-8). A bull was killed as an offering in the rite called *sūlagava* (vide H. of Dh. vol. II pp. 831-832). As flesh-eating came to be looked down upon, cow sacrifice became most abhorrent and Kalivarjya texts only register a prohibition which had been acted upon centuries before.

15. 'The employment of cups of wine in the Sautrāmanī' (I. 10).

The Sautrāmanī is not a soma sacrifice but it is a combination of an *apt* with an animal sacrifice. It was so called from 'sutrāman' (an epithet of Indra). Its peculiar characteristic was the offering of *surā* in cups. In modern times milk is offered in its place and Āp. Śr. allowed it even in ancient times ¹⁸¹⁹. It was included among the seven *havyajñas* by Gaut. (VIII. 20). At the end of the Rājasūya it was performed or in Agnicayana or for one who suffered vomiting or purging from the excessive drinking of soma. For sautrāmanī and the preparation of *surā* in it, vide H. of Dh. vol. II pp. 1225-1228, Bhattoji (in com. on Caturvimsati-mata p. 53) and the Nirṇaya-sindhu construe this to mean 'having social intercourse with one who employs *surā* in Sautrāmanī' but this is not satisfactory. The Dharmasindhu explains as above (III. pūrvārdha p. 357) ¹⁸²⁰.

1818. कृषन्मोसवै । ... उच्यते गोसवो अमुतद्विधः । वैश्यस्य हव्येने । सप्त-
जानो विशो षं दुरस्तुर्वीत्य । कात्या. श्रौ. 22. 11. 3, 6-8.

1819. चात्मानं सार्जयित्वापरस्मिन् खरे सुराग्रहणं युज्यते । ... पयोयज्ञा वा न्तु ।
आप. श्रौ. 19. 2. 7, 13.

1820. सुराग्रहणस्य सुराग्रहणकर्तुः संग्रहः व्यवहारः । भट्टोजि on चातुर्विंशतिमत
p. 53 ; सौवामणादिवहेपि सुराग्रहणस्य । धर्मसिन्धु III. p. 357. The कलिवर्णवि.
(folio 6b) remarks, 'सुराग्रहणस्य संग्रहः पयोमविधिनालुडापनम् । यन् संग्रहपदव्या-
ख्यासारेण सुराग्रहणस्येवमेव सुराग्रहणकर्तारं विवक्षितं तस्य संग्रहो व्यवहार इति
व्याख्यातं तत्र । अस्मदुक्तमार्गेण नविसम्भवे लक्षणाभवरूपं जग्यपरात् । किं चैवं सति सौवा-
मणां सुराग्रहस्य विषयो न व्यापककर्तुः परं व्यवहारविषयः स्यात् । तस्य समाचारादिकञ्च ॥

16. 'The licking of the Agnihotrahavani and the use of it even after it was licked' (I. 11). In the Agnihotra the *sruva* ladle is held in the right hand and the *sruva* called agnihotrahavani is held in the left and the milk is poured into the latter from the milk pot with *sruva*. After the Agnihotra homa is offered the agnihotrahavani is licked twice in order to take out the remnants of the milk and after wiping it with darbha blades it is used again. Ordinarily a vessel when it is once licked by a man cannot be used again in a religious rite unless proper purification is resorted to. But this did not apply to the Agnihotrahavani and *amavasi* of soma. Vide H. of Dh. vol. II p. 1002, n. 2663 for agnihotrahavani, p. 1005 for its licking and p. 1177 (n. 2598) for the drinking of soma from the same *amavasi* by the several priests. The licking of the agnihotrahavani and its use constitute really the subject of the prohibition.¹⁸²¹

17. 'Entering on the stage of forest hermit as laid down in the texts about it' (I. 12). Gaut. III. 25-34, Āp. Dh. S. (II. 9. 21. 18 to II. 9. 23. 2), Manu VI. 1-32, Vas. IX. 1-11, Yāj. III. 45-55 lay down elaborate rules for the stage of forest hermits. Vide H. of Dh. vol. II pp. 917-929 for a description and remarks on *amnyāsa* to be made later on.

18. 'The narrowing down or curtailment of the periods of impurity depending upon the Vedic learning and the mode of life of a person' (I. 13). 'Agha' means 'āsaucā'; 'vr̥tta' (mode of life) refers to tending sacred fires or maintaining oneself in the way described by Manu IV. 7-10. The general rule about the period of impurity for a brāhmaṇa on the death of a sapinda was stated by Gaut. 14. 1, Manu V. 59 and 83 to be that it was ten days and Āngiras quoted by the Mīt. on Yāj. III. 22 prescribes impurity for ten days for all varṇas, but Manu V. 59 also spoke of the period being four days, three days or one day, which, acc. to the Mīt. on Yāj. III. 28-29, refers respectively to kumbhūdhānya, one who has collected food for three days or one who collects nothing for the morrow. Dakṣa VI. 6 and Parā-

1821. माद्वययोद्वयपवा वा सुचा द्विराचामति द्विव निर्लेहि । सत्पा. ओ. III. 7. 19; लोहाया उच्छिद्यद्वयोद्वयपवाय विना परिग्रहो यस्मिन् निहितत्वेन निर्वोपत्वादिवाशपा । तत्तत्र न द्रव्यमिवेषः परित्यज्यत । स्मृतिकौस्तुभ p. 471; अग्निहोत्रं कृते यथा सुचा सा नैकाद्रुतौ अग्निहोत्रहवनी तस्याथ होमान्तरे हुतावशिष्टमपि पविष्युतवाशनायै लोहो विह्वया-
वसादनं कथञ्चिद्विवाशनासत्पा. पुनः परिग्रहो दिनान्तरे होमसाजनता । कलिवर्गवि. folio 7a.

sara¹⁸²² III. 5 both state that a brāhmaṇa who keeps the Vedic fires and has studied the Veda becomes free from impurity in a day, one who has only studied the Veda (but does not tend sacred fires) becomes free in three days, while one devoid of both becomes free after ten days. Aparārka (p. 894) and Haradatta on Gaut. 14. 1 quote Brhaspati to the same effect. The Mit. remarks¹⁸²³ (on Yaj. III. 28-29) that the curtailment of the period of impurity is not absolute but is restricted only to certain special matters viz. the receiving of gifts, the performance of Agnihotra, the study of the Veda and such matters in which distress would be caused if the period were not curtailed. This explanation clearly proves that Viṣṇaśvara (end of 11th century) was not aware of the prohibition of the curtailment of the periods of impurity or treated it with scant respect. The curtailment of the period of impurity was laid down probably because curtailment led to confusion, since a person may claim to be learned, while his neighbours may not concede that claim.

19. 'Prescribing death as the penance for brāhmanas'. (1. 14).

Manu XI. 89 provides that if a person intentionally murders a brāhmaṇa there is no expiation for it. Manu XI. 90 prescribes death by drinking boiling wine for the sin of drinking *sura*, while Manu XI. 146 provides¹⁸²⁴ that if a man knowingly drinks wine there is no expiation for it, but only death. The Viṣṇudharmasūtra (chap. 34) states that incest with the mother, daughter or daughter-in-law is *atipātaka*, such sinners have to

1822. एकाहश्चतुर्दशदिने विमो योऽग्निविदसमन्वितः । उपहास्येव लवेदस्तु द्विहीनो द्वात्रिंशदिनेः । बृह. VI. 6 and पराशर III. 3, quoted by विश्वरूप on या. III. 30, विराट्पैण्येयं शुश्रेयं विमो वेदादिसेवितः । यजुर्भिर्वाग्निहीनस्तु द्वादशाहं नाग्न्यभयः । शिलो-अद्याप्यचित्तोऽपि सप्तः शुश्रेयं द्विजैः सप्तः । याजुर्भिरावसारोऽपि तिष्ठः सप्तशः उपस्तिष्ठ च । न करोति चतुर्दि च पञ्चशः सप्तशं भवेत् । बृह. v. by अपराशर p. 524.

1823. अथ चाग्नीचमङ्गुलिचो वेनेष मतिग्रहादिना विनातिसाद्विषयो न सर्वत्राप्यमल-क्षयम् । ... अतः काचित्कमेवेदमाशौचमङ्गुलिचविधानं न युजः सर्वसंयकहारादिनोच्चरन्तिव-त्समतिपञ्चमेन । मिता. on या. III. 25-29.

1824. मतिपूर्वमनिर्देश्य मायात्मिकमिति स्थितिः । मनु XI. 146. Most of the commentators of Manu explain this half differently as meaning 'a penance destructive of life should not be prescribed'. But this explanation is opposed to Gaut. 21. 7 ('योऽग्निं यथामान्यनिर्देश्यानि मनुः) and to Medhātithi, Vide कलिकवर्णि, folio 7a 'यस्तु केचिद्दृष्ट्वा कृत्यात् मतिपूर्व ... स्थितिरिति मनुसाध्यास्तरो-यात् समवेदिकेयो मरणात्मिकं क्षोपदेहार्थं तेनैव रहस्यपरापञ्चितव्यथासाध्याद्विद्वत्क्षेपमिति तन्मन्त्रं मनुस्मृत्यैव श्रुतमिति च । वमानाभावात् ।

enter fire and there is no other penance for this sin. Vide Gaut. 21. 7 also. Some smṛtis held that there was no *prāyaścitta* for certain grave sins except falling from a precipice or into fire. As a brāhmaṇa's person became more and more sacred with the march of time, death ceased to be a penance for a brāhmaṇa sinner, however grave the sin might be. But this did not apply to a kṣatriya or any one else (other than a brāhmaṇa).

20. 'Pollution through contact with a sinner' (1. 15). Manu XI. 180 (= Śānti 165. 37 = Baud. Dh. S. II. 1. 88),¹⁸²⁵ Viṣṇu Dh. S. 35. 2-5 provide that if a person continues for one year in close association (*saṁsarga*) with one guilty of the grave sins (enumerated in Manu XI. 54), in respect of occupying the same conveyance or seat with him or dining in the same row with him he becomes *patita*; but he becomes *patita* immediately if he officiates as a priest for such a sinner or performs his upanayana for teaching him the sacred Gāyatri and the Veda or if he enters into a matrimonial alliance with him. Parāśara (I. 25-26) states that in the Kṛta age a person became *patita* by speaking with a *patita*, in Tretā by seeing him, in Dvāpara by partaking of food prepared in his house, but in Kali by actually committing a (sinful) deed and that when a grave sin was committed by a man, in the Kṛta age the whole district in which he lived was to be abandoned, in Tretā the village, in Dvāpara his family alone and in Kali only the perpetrator.¹⁸²⁶ Parāśara (XII. 79) no doubt¹⁸²⁷ says that 'sins (i. e. pollutions are caused) are transferred, as a drop of oil (spreads) on water, by sitting or sleeping together or by using the same conveyance, by speaking with or by dining in the same row with a sinner'; but this only means that to associate with a sinner is bad, but it does not mean that to associate with a *patita* immediately makes the associator himself a *patita*. The Mit. on Yāj. III. 261 quotes Devala¹⁸²⁸ and Vṛddha-Bṛhaspati to the effect

1825. संवसरेण पतति पतितेन महाचरत् । राजनाम्नापनासौनाम्न तु चानासनाशनात् । मनु XI. 180, चौ. ध. सू. II. 1. 88.

1826. स्पृष्टेदेवं हनयुवे वेतापां ग्राममुत्सृजेत् । द्वारे कुलमेकं तु कर्तारं च कलौ युगे ॥ कुले सम्भाषणात्पापं वेतापां चैव दुर्हमात् । द्वारे आशमायाव कलौ पतति कर्मणा ॥ पराशर I. 25-26.

1827. आसनाश्वयनाशनात्सम्भाषात् सहनोजनम् । सेकामन्ति हि पापानि तैल-विन्दुरिवाम्बुसि ॥ पराशर XII. 79, which is the same as कृत्वा च by परा. मा. II. 1. p. 28 (where संलापात् is read for सम्भाषात्).

1828. संलापस्पर्शनिःश्राससहपासनात्सम्भाषात् । राजनाम्नापनासौनात्पापं सेकामने वृणात् ॥ देवल p. by मिता. on यज. III. 261, अपराध p. 1087.

that *samsarga* arises in nine ways viz. by talk, by touch, by breathing the same air (i. e. by being in the same room), by being in the same conveyance or on the same seat or bed, by dining in the same row, by being a sinner's priest or vedic teacher or entering into matrimonial alliance with him. The Par. M. says that Parāśara held the view that there was no *pāṭilya* by the various kinds of contact in Kali and so provided no *prāyaścitta* for *samsarga*. The Nirayāsindhu¹⁸²⁹ and Bhattoji make similar remarks. The Udvahatattva says that Parāśara I. 25 is to be interpreted in this way that merely speaking or touching a *patita* or receiving money from him does not make another liable to any *prāyaścitta*, but that if the association with a *patita* goes quite beyond these, then sin may be incurred by association. So almost all the digests are agreed that the rigour of the very strict rules about *samsarga* in Manu and Baud. was modified by declaring that speech with or sight of a sinner involved no sin in Kali.¹⁸³⁰

21. 'Undergoing (secret) expiation for the grave sins (mahāpātakas) except theft' (I. 15). Hārta (q. by Par. M. II.¹⁸³¹ part 2, p. 153) prescribes secret expiation for a brāhmana who has studied dharmasāstra and committed a sin without anyone knowing it. Gaut. (chap. 24) prescribes certain expiations to be undergone secretly (without any third person knowing of such performance) for even mahāpātakas such as brāhmana murder, drinking surā, incest and theft of gold. Vaa. (chap. 25) also does the same and states (25, 2) that only those who have kept the sacred vedic fires, who are disciplined and old or learned are entitled to secret expiations for sins and not other people. The Viṣṇu Dh. 8. 55 deals with secret expiations. Parāśara IX. 61 (last verse) laid down¹⁸³² the general rule that one should openly

1829. आचार्येन्दु कलिद्युगे संसर्गदोषाभावमभिधेय संसर्गपापक्षितं नाप्यथात् । अथ एष स्तुत्यन्तरे कालौ वर्ज्यान्तानुक्रमणे संसर्गदोषः पापेषु इत्युक्तम् । परा. मा. II part 2 p. 90 ; it may be noted that the धर्मद्वैतनिर्णय (p. 132) quotes this passage and criticises it ; कालौ कर्तव्यं लिप्यते—इति व्यासोक्तः पतितसंसर्गे दोषसन्नेपि यातिर्ये जेत्यर्थः । निर्णयसिन्धु III. p. 363.

1830. कालौ कर्तव्यं लिप्यते — इत्यनेन संभाषणशब्देनादिजन्मपातितपतस्यैव निषेधः । सप्तममध्यायः.

1831. अथ आह्वयस्य श्रुतधर्मशास्त्रस्य स्वरूपमनुक्रमिष्यामः । स्वरूपं स्वरूपे भवति यथासाधम् । परा. मा. II part 2, p. 153.

1832. तस्मात्प्राप्तयेनार्थं स्वधर्मं सततं चरेत् । क्षीयात्प्राप्तयेनचित्तिकोपं विवर्जयेत् ॥ पराशर IX. last verse.

declare one's sin. The Kaliurjya text provides that secret expiation is allowed as regards only theft among the mahāpātakas in the Kali age, though in earlier ages it was allowed as to other mahāpātakas also. The Nirṇayasindhu says that secret expiation is allowed only to brāhmanas. According to the Dharma-sindhu, in the Kali age if a man is guilty of the murder of a brāhmaṇa or of other mahāpātakas he does not avoid the consequences of falling into Hell when he undergoes an expiation but he becomes only fit for social intercourse, while as regards theft of gold (a mahāpātaka) by undergoing prāyaścitta he avoids the fall into hell and also becomes fit for social intercourse. The Kaliurjyavinirṇaya appears to hold that all secret expiations are forbidden in Kali.¹⁸³³

22. 'The act of offering an animal with the recital of Vedic *mantras* to the bridegroom, to a guest and in honour of pitrs' (1. 16).¹⁸³⁴ Madhuparka was offered in ancient times on several occasions and to several persons such as to *ṛtiks* at sacrifices, to the king, to a *snātaka*, to one's ācārya, father-in-law, paternal or maternal uncle and to a bridegroom. Vide H. of Dh. vol. II pp. 542-546 for details about Madhuparka. Originally a cow or a bull was killed for an honoured guest, later on when the cow came to be extremely sacred the flesh of some other animal was offered; when flesh-eating itself came to be looked down upon then only *pāyasī* and other vegetarian eatables came to be prescribed. Vide H. of Dh. vol. II pp. 777-782 on flesh-eating. This half line forbids the offering of flesh to a bridegroom or to an honoured guest (in madhuparka) and the feeding of

1833. The कलिर्गर्भम् (folio 8a) notes, 'अत एव ब्रह्महत्यादीष्वपि स्रुत्यादि-
बु-डावृण्ति प्रयत्नेन स्वदोषं पापकर्मिणः । एतदप्येव कुर्वन्ति पापश्चित्तकर्मिणो कलौ । मना-
शुद्धिर्विनिर्माणा निष्कृतिरु ततो भवेत्—इत्यादि तत्र तत्र निन्दामकमेव स्वयत्तमेव निन्दि-
तम् ।' It should be noticed that the Nirṇayasindhu and a few others read
संसर्गदोषलोपायमहापातकनिष्कृतिः as one word meaning 'secret expiation for
mahāpātakas other than theft and other than association with those guilty
of grave sins'. The स्मृत्यर्थसार (p. 2), मद्. पा. p. 16 and उद्वाहतरु (p.
112) read this half line as संसर्गदोषः पापेषु मनुष्ये पशोर्मांसः । ब्रह्महत्यादि-
महापातकेषु पापश्चित्तेन नरकनिवृत्तिर्भवति किं लिङ् लोके उपहारापतामात्रं कलौ भवति ।
स्वर्गलोपादिवु त् पापश्चित्तेन नरकनिवृत्तिर्यवहार्यता च । धर्मसिन्धु III, पूर्वार्धे p. 338.

1834. उपकरण has a technical sense. It means 'touching the ani-
mal to be sacrificed with several mantras'. Manu V. 7 employs the word in
that sense and Kullūka comments, 'पशुपायादौ मन्त्रबहुलेन दशोः स्पर्शनमुपाकरणम्' ।
The कलिर्गर्भम्. (9a) quotes देवतानादिसेदुमुन्मै स्वा जुवमुपाकरोमि. With reference
to *śrāddha* the word *upākaraṇa* is used in a secondary sense and not in the
literal sense. For the *upākaraṇa mantra* अमुन्मै...करोमि, vide आश्व. सू. I. 11. 2.

brāhmanas with flesh at śrāddhas. Comparatively so late a writer as Yāj. (I. 258-259) extols the high gratification that the *Manes* feel when flesh of various animals is offered in śrāddhas. This one prohibition includes in itself several prohibitions that are separately mentioned in other texts such as 'govadha' (in notes 1797 and 1799), the killing of an animal in a Madhuparka (in n. 1798), 'gavāśambha' and 'palapaitrka' (in note 1803). It is noteworthy that even so late as the first half of the 17th century Viśvanātha, a great logician, takes up the cudgels on behalf of flesh-eating by brāhmanas in sacrifices, śrāddha, madhuparka, in danger to life and when ordered by a brāhmana and charges those who totally forbid flesh-eating with being the followers of the doctrines of Bauddhas, while the latter at the same time prescribe expiations for even murderers of brāhmanas through greed of money and marry their maternal uncle's daughters or other sapindas of their mother, though both of these latter are forbidden by the Kalivarjya texts. 1835

23. 'Association with those that are guilty of intercourse with women who are not of the same varṇa, even though the former may have undergone proper expiation for the lapse' (I. 18). There was great divergence of views as regards the *prāyascitta* for adultery by a male with a female of the same class, of a higher class or of a lower class. Further the ancient sūtras were rather hard on the guilty parties, the harsh rules being relaxed by later *smṛti* writers. For example, Gaut. 23, 14-15 and Vas. 21, 1-3 prescribe for a male of a lower caste having intercourse with a woman of a higher caste death in various ways. If a brāhmana had sexual intercourse with a *cāṇḍāla* or *śvapāka* woman *Parāśara* (X. 5-7) prescribes that he has to undergo a fast for three days, tensure of the head together with the top knot, three *Prājāpatyas*, *Brahmakūrca*, feeding brāhmanas, constant recital of the *Gayatri*, gift of two pairs of cows and then he becomes pure, while a *śūdra* doing the same had to undergo the expiation of one *Prājāpatya* and had to make a

1835. तस्माद्यज्ञे आहो मनुष्यं नापत्यये वाङ्मयाज्ञापं च भोक्तव्यं तद्व्यतिरेकेणापि
पुत्रपत्न्यावशिष्टं देवपितृर्चनायज्ञिष्ठं च चतुर्णामपि वर्णानामपिशिष्टेण भक्ष्यम् । मांसवत्प-
त्रिकं च विश्वनाथ (Sarasvatibhavana series, Benares, 1927) : ये तु कालिदास्य-
तया मांसआहो विवदन्ते तेषां तन्महापातकमिष्टातिरिति कश्चिद्व्यतिरेकमपि मङ्गलव्याख्ये-
संस्कारावधिने धर्मलोभादुपदिशन्ति मातृसपिण्डान्नपते (सपिण्डापरिणयने !) च न विवदन्ते
समरोपपृष्टिचेतसो वैशानं विचार्यते केन सिद्धयिष्या इत्यतः मांसविहितादिः सोमतमताहु-
सोरिति सह अमेवेति : *ibid.* pp. 22-29.

gift of two cows. If a person of a low caste has intercourse with a woman of a higher caste (e. g. a śūdra has intercourse with a brāhmaṇa woman) Sāmivarta (verses 166-167) prescribes the expiation of subsisting for a month on cow's urine and *pāṇaka* (barley gruel) for him. If a brāhmaṇa commits adultery with a śūdra or cāṇḍāla woman Sāmivarta (verses 169-170) prescribes the expiation of cāndrāyana, while Parāśara (X. 17-20) prescribes a far more severe expiation. The present text prescribes that, even after undergoing expiation, men guilty of intercourse with women of castes other than their own cannot be allowed to have social intercourse with their castemen. The Dharmasindhu¹⁸³⁶ says that śūdras that have intercourse with brāhmaṇa or other women of a higher caste are hereby declared to be unfit for social intercourse even after they undergo expiation. This no doubt made for strictness in morals, but it also led to the preservation of caste exclusiveness.

24. 'Abandonment of a mother (or other woman who is to be honoured owing to relationship) because she has had sexual intercourse with one of low class' (L 19).

The provisions of the sūtras and smṛtis on the subject of expiation for adultery by women varied from time to time. Gaut. 23. 14 and Manu VIII. 371 prescribe that a woman who has intercourse with a man of low caste is to be punished by the king with being devoured by dogs. But other smṛtis and Manu himself (XI. 177) are not so harsh, but are rather humane in their treatment of adulteresses. Manu XI. 176 says that the husband should keep confined to one apartment his corrupt wife and compel her to perform the expiation which is prescribed for males in cases of adultery. Manu XI. 59 and Yāj. III. 235 regard adultery by a male (pāradārya) as an upapātaka and Manu XI. 117 and Yāj. III. 265 prescribe cāndrāyana as an expiation for all upapātakas. Vas. XXI. 12 prescribes that the wives of men of the three higher castes who are guilty of adultery with a śūdra may be purified by an expiation if no child is born of the intercourse but not otherwise. Yāj. I. 72 provides that a woman becomes free from the taint of adultery when she has her monthly illness after the adultery but if she conceives in adulterous intercourse she may be abandoned. The Mīl. on Yāj. I. 72 states that both Yāj. and Vas. are to be

1836. विनादिकीसम्भवेन ज्ञानाद्युद्गादीनां वाग्विलेपि संसर्गो निवर्जितः । धर्म-सिन्धु III. पूर्वांश p. 358.

understood in the same sense and abandonment does not mean driving out of the house but only not allowing her to participate in religious acts and not having sexual intercourse with her. Vas. XXI. 10 states that only four kinds of women are to be abandoned, viz. one who has intercourse with the husband's pupil or with the husband's *guru*, one who attempts to kill her husband or one who commits adultery with a man of a degraded caste. Yāj. (III. 296-7) provides that to woman that are *patita* the same rules apply as to men, but they should be given food, raiment and protection and that intercourse with a man of low caste is one of the three gravest sins for women. Vide Mit. on Yāj. III. 297. The present text states that a woman (such as a mother) who is entitled to honour from a person because of her relationship (as mother, elder sister etc.) is not to be abandoned and cast on the street by him, although she may be guilty of adultery with a degraded or low caste man, in spite of Vas. XXI. 10 and other texts (such as Br.).¹⁸³⁷ That is, this text was more humane to such women than ancient texts. Kṛṣṇa-bhatta explains that 'guruśtriyaḥ' means 'of a brāhmaṇa woman'. Vide H. of Dh. vol. II pp. 571-573 for further remarks on adulterous women. Āp. Dh. S. I. 10. 28. 9 requires the son always to serve and wait upon the mother even though she may be *patita*. Atri¹⁸³⁸ (195-196) and Devala (50-51) contain two verses (almost in the same words) which are lax as compared with other ancient texts. They say: 'If a woman conceives through intercourse with a male who is not of her caste, she becomes impure till her delivery. When she is delivered or she has her monthly illness after the intercourse she becomes like pure gold'. Atri (197-198) further provides that whether a woman willingly has sexual intercourse or is deceived or is enjoyed against her will or in secret, she should not be abandoned; one should wait till the monthly illness and she becomes purified by that illness'. This comparative laxity of

1837. अनिच्छन्ती तु वा मुक्ता मुक्तौ वा वासयेद् द्यौः । मलिनान्द्रौमधःशय्यां दिग्भू-
माजोपजीविनीम् । कारयेच्छिच्छति कृच्छ्रे पराकं वा समे यताम् । द्वाविमर्षापिमुक्ता वा त्वाज्या
वध्यापि वा भवेत् । वृत्त्यपि य. by वितादरनाकर p. 400 and by पापञ्चलविषेक
p. 360 (last half).

1838. असर्वज्ञस्तु वो यमो जीवां पोतो निश्चिप्यते । अमुद्धा सा भवेज्जारी पारतुर्न न
सुखति । विमुक्ते तु ततो शल्ये रजस्यापि महदपते । तदा सा सुधपते नारी निमले काञ्चने यथा ।
स्वर्प निमित्तपक्षा वा यदि वा निमित्तादिता । बलाजारी ममुक्ता वा चौरमुक्ता त्वापि वा । न
त्वाज्या दृष्टिता नारी न कामोऽस्या विधीयते । अतुकाल उपसीत सुधकादिन सुधपति ।
भाषि 195-198.

the later *smṛti* of Devala and Atri is remedied by this Kālicarjya text which forbids abandonment of only such women as the mother, but allows the abandonment of others when guilty of intercourse with a male of low caste. Devala prescribes expiation by *sāntapana* in the case of those women that are raped by *mlecchas* and conceive (verses 47-49). Vide also Atri 201-202. The Sm. Kau. restricts this half verse to the mother alone. Parāśara (X 24-25) prescribes that if a woman be raped once she becomes free from pollution by undergoing *Prājāpatya* after she has her monthly illness and in other cases of rape she has to undergo *Sāntapana*.

25. 'Sacrificing one's life for the sake of another' (I. 20). The Viṣṇu Dh. S. III. 45 states¹⁸³⁹ that those who are killed in saving the life of a cow, a brāhmaṇa, the king, a friend, one's wealth and one's wife go to heaven and XVI. 18 provides that even those (untouchables) who are outside (the pale of the four varṇas) and sacrifice their life for brāhmaṇas, for cows and for women and children attain heaven. The Ādityapurāṇa quoted in Rājadharmakāṇḍa (p. 91) has a similar verse. The Samayamayūkha and Bhaṭṭojī quote a *smṛti*, 'one should at once sacrifice one's life for cows and brāhmaṇas'.¹⁸⁴⁰ This text forbids self-sacrifice of one's life simply for the promised reward of heaven in the cases specified. The K. V. N. (folio 9b) offers two more (rather far-fetched) explanations of this phrase, one of which is 'offering one's services as a serf to another'. This is prohibited to members of the three twice-born classes in Kali, but not to the śūdras, acc. to K. V. N.

26. 'Offering (of food) to another that remains after one has partaken of it' (I. 20). In the Madhuparka the honoured guest used to partake of a part of the offering of honey, milk

1839. मोक्षायुष्यपत्तिनिवर्धनद्वाराजीवितरक्षणायै वृत्तास्ते सर्वभाजः । विष्णुधर्म-
सूत्र III. 45: ब्राह्मणार्थं नवार्थं वा देहव्यामोक्षयाकृतः । श्रीमहाभ्युपपत्तौ च ब्राह्मणो
मिक्षिकारणम् ॥ *ibid* XVI. 18: आदित्यपुराणे-... ब्राह्मणानां यथा चैव रक्षार्थं हन्यते यदि ।
स शूरो जीवितं दिव्या इन्द्रुत्तमं ययत्ते ॥ राजधर्मकाण्ड p. 91.

1840. परेषां मोक्षायुष्यवर्धनसुहृदोऽनं तद्वापत्तिमोक्षार्थं प्राणत्यागः 'नवार्थं ब्राह्म-
णार्थं वा सद्यः प्राणान् परिस्पृजेत्-हृत्पादिनोक्तः । महोत्ति on चतुर्विंशतिमत् p. 34. Almost
the same words 'परेषां ... सुहृदोऽनं निमित्तेन तदा ... मोक्षार्थं सुहृत्पूर्वं ... हृत्पाद्युक्तः'
occur in कलिविजयनि. folio 2a. We find in the पञ्चतन्त्र (I, verse 205) this verse
quoted, 'नवार्थं ब्राह्मणार्थं स्वार्थं श्रीकृते तुभ्यः । स्वानार्थं यस्य जेत्यानां तस्य होक्ताः
सन्तततनः ॥' and I. 420 is 'नवार्थं ब्राह्मणार्थं च प्राणत्यागं करोति यः । सूर्यस्य मण्डले
भिषा स गतिं परतः यतिम् ॥'

and curds and was to give the remainder to a brāhmaṇa (or a son or a younger brother). This is prohibited by this Kalivarjya text. Vide H. of Dh. vol. II, p. 544 for this practice. Āp. Dh. S. (I. 1. 1. 1-6) provides that the pupil may partake of the leavings of his teacher's food, but the teacher should not give him honey or meat or other food which will be opposed to the observances of a vedic student. The *Nirnayasindhu* reads 'uddiṣṭasyāpi varjanam'¹⁸⁴¹, which means 'not accepting what has been donated.' Yaj. I. 313 says that if a person worthy of accepting a gift does not keep it for himself (but passes it on to others), he secures the highest worlds obtained by those who make generous gifts. Bhaṭṭoji gives another explanation. Vas. (14. 21) forbids a man to eat the remnants of his own food or to eat food that comes in contact with the leavings of food. This Kalivarjya text sets aside for the Kali age the prohibition contained in Vas. 14. 21 (acc. to Bhaṭṭoji). The K. V. N. (folio 10 a) states that this is the explanation given by some, but does not approve of it. The Sm. Kau. gives yet another but extremely far-fetched explanation.¹⁸⁴² These several explanations of the same half verse indicate how some of the Kalivarjya texts are comparatively recent and have no settled meaning even according to comparatively late writers of digests.

27. 'The resolve to offer worship (throughout life) with various details to a certain idol (1. 21).

It is not easy to see why such a resolve should have been prohibited. Therefore this explanation given by Bhaṭṭoji, K. V. N. (folio 10 a), the *Samayamayūkha* and others is not satisfactory. It is better to accept the explanation of the Nir. S. that this forbids the undertaking of the worship of a particular image for wages. Aparārka (pp. 450 and 923) quotes a *smṛti* text defining a *devilaka* as a brāhmaṇa who performs the worship of an image for wages for three years and who thereby becomes unfit

1841. उद्दिष्टस्यपि वर्जनमिति । स्मृतिरुद्दिष्टस्य उद्दिष्टोपदानं चेत्पादिविधायकम् ।
महोत्तमः on चतुर्विं, p. 54 ; उद्दिष्टस्य त्यक्त्वा वर्जनं प्रतिग्रहसमर्पणीत्युक्तम् । निर्णयसिन्धु
III. p. 368.

1842. वस्तुतस्तु उद्दिष्टव्ययवेनोक्तत्वेन पित्रादिभिरिष्टं निर्दिष्टं विवर्तितमेक एवायं ।
साहजस्यपि (वि ?) वर्जनं वायथाठादित्यत आह । अयं विवर्तितः साहजस्य वस्तुतस्तु
परस्मै समर्पणं दर्शयिष्यते । ... तथा च कलौ शुरोर्वचनादुरोपेन व्रतविक्रयान्तरं न केनचित्
व्रतव्रतनिर्देशाभावात् । अतस्तु तद्वचनोक्तत्वेन दोषाधिक्यमपि । तथा च ब्रह्मवैवर्ते कालिदासस्य
शुद्धभजननीचरभजनानुपादरणीत्युक्तम् । स्मृतिकौ. p. 477.

to officiate at śrāddhas.¹⁸⁴³ Manu III. 152 declares the devalaka to be unfit for being invited for śrāddhas or rites in honour of gods and Kullūka quotes Devala to the effect that one who maintains himself on the treasury of a shrine is called devalaka. It is remarkable that Vṛddha-Hārta (VIII. 77-80) says that only the worshippers of Śiva for wages are called devalaka and those of Viṣṇu are not. Acc. to the Sm. Kau. what is forbidden is the resolve to worship an image for securing a direct vision of the Deity.¹⁸⁴⁴ This is rather pedantic and far-fetched.

38. 'Touching the bodies of those (who are impure on the death of a relative) after the collection of the bones' (I. 22). The day on which the bones were to be collected after the body was cremated differed greatly according to various writers. The Mit. on Yaj. III. 17 notes that according to Samvarta¹⁸⁴⁵ (verse 38) the bones may be collected on the first, third, seventh or 9th day, that the Viṣṇu Dh. S. (19. 10-11) prescribes the 4th day for it and recommends the casting of them into the Ganges, that some did it on the 2nd day and that therefore everyone should follow his own Grhyasūtra. The Mit. on Yaj. III. 18 quotes Devala to the effect that, after the lapse of one-third of the period of impurity prescribed for members of the four varṇas (as in Yaj. III. 22), persons who lost relatives become touchable, that members of the four varṇas become touchable in three, four, five and ten days respectively. Samvarta (verses 39-40) states that, after the collection of bones, touching those who are under pollution due to death is allowed on the 4th, 6th, 8th and 10th day respectively in the case of brāhmanas, ksatriyas, vaiśyas and sūdras. The present Kaliurjya text forbids this and becomes stricter as to the rules about impurity.

29. 'The performance by a brāhmaṇa of the duties of the killer of the victim in a sacrifice' (I. 23).

1843. स्मृत्स्मरम् । सुभ्दा देवलकं चैव मयासां जलमावेशेत् । देवार्चनपरो विमो विस्तीर्णो वस्त्रवपम् । असौ देवलको नाम हव्यकण्डेभ्यु मल्लिकः । अपराको p. 923 ; देवकोशोपजीवी च नाज्ञा देवलको भवेत् । अपाङ्गकोऽयः स विज्ञेयः सर्वकर्मसु सर्वदा ॥ देवल q. by अपराको p. 450 and कुल्लूक on मनु III. 152 (first half).

1844. प्रतिवेत्त्यर्थेऽभिज्ञमद्योऽपरोक्षज्ञानपरः । ... ततश्च देवतासाक्षात्कारकणो यः प्रतिमार्चनार्थः पूजाफलनिमित्तं यावत् तदुद्देश्यकः सङ्कल्पो निर्विषयः । प्रसक्तध्यासौ पूजाफलत्वेन देवतासाक्षात्काररूपं पीरागदुर्वादिनाम्बरानेकवचःसिद्धत्वात् । स्मृतिको. p. 473.

1845. प्रथमेऽङ्गे तृतीये च सप्तमे मन्वे तथा । चतुर्थेऽङ्गे कर्तव्यमस्ति सञ्चयनं द्विजैः ॥ ततः सञ्चयनादूर्ध्वमङ्गस्वर्गो विधीयते । चतुर्थेऽङ्गे विप्रस्य षष्ठे वै काशिस्य च ॥ अष्टमे दशमे चैव स्वर्गः स्वाह्वैरपञ्चम्योः । संवत् 38-40.

The animal in a *śrauta* sacrifice was to be killed by choking it and strangling it. The person who did so was called *śamitr*. Different views were entertained as to who was to be the *śamitr*. Acc. to *Jai.* III. 7. 28-29¹⁸⁴⁶ the *adhvaryu* himself was to be the *śamitr*; the usual opinion was that he was to be some one other than the *ṛvīks*. The *Āśv. Śr.* (XII. 9. 12-13) shows that he may be a *brāhmaṇa* or a non-*brāhmaṇa*. For further details vide H. of Dh. vol. II pp. 1121-22, n. 2504. As animal sacrifices themselves came to be looked down upon or even forbidden, this text forbids a *brāhmaṇa* from being a *śamitr*.

30. 'The sale of the soma plant by *brāhmaṇas*' (i. 23).

Soma beverage was to be drunk only by *brāhmaṇas*. The *soma* plant had to be purchased and there was a symbolic haggling for it. The vendor of *soma* in ancient¹⁸⁴⁷ times was, acc. to *Kat. Śr.* VII. 6. 2-4 and *Āp. Śr.* X. 20. 12, either a *brāhmaṇa* of *Kutsa* gotra or any *brāhmaṇa* or a *sūdra*.¹⁸⁴⁷ In later times, though *Manu* XI. 7 (= *Śānti* 165. 7) and *Nār. (dattapradanika 7)*¹⁸⁴⁸ allow a *brāhmaṇa* who has wealth sufficient for the maintenance of himself and his dependents for three years or more to perform a *soma* sacrifice, yet *Manu* III. 158, *Yāj.* I. 165 and *Vas.* 14. 3 hold that a *brāhmaṇa* who sells the *soma* plant is unfit to be invited at a *śrāddha* and that one should not partake of food at his house. *Manu* X. 88 forbids a *brāhmaṇa* to sell water, arms, poison, *soma* &c. Vide H. of Dh. vol. II. pp. 1141-1143 for purchase of *soma* and the dramatic haggling for it.

31. 'Allowing a *brāhmaṇa* householder to eat food at the houses of four classes of people among *sūdras* viz. his slave, his cowherd, a hereditary family friend and one who cultivates his fields on the basis of paying a half or other portion of the produce to him' (II. 25-26).

Gant. 17. 6, *Manu* IV. 253 (= *Viśvū Dh. S.*¹⁸⁴⁹ 57. 16), *Yāj.* I. 166 and *Parāśara* XI. 19 say that a *brāhmaṇa* may eat the

1846. शबर on जै. III. 7. 29 remarks, 'शामित्रमपि आश्वर्येण समानानादध्वर्युणा कर्तव्यम् । तस्माच्छ्रमनादध्वर्युः क्षमिता ।'

1847. कौत्साद्वाजानं क्रीणीषादन्वस्माद्वा बाह्यणादिविषयवादाप्यबाह्यणादिति । आप. श्रौ. X. 20. 12.

1848. यस्य वैवायिकं विसे पक्षांते सूर्यवृत्तये । अधिकं वापि विहितं स सोमं वाह-
मर्हति ॥ नारद (कुलान. 7). This is the same as मनु. XI. 7, but नारद reads
विषं for भक्ष्यम्.

1849. अर्थिकः कुलमित्रं च दासगोपालवापिताः । एते शूद्रेषु भोजयन्ता पञ्चात्मानं
निषेदयेत् ॥ निषिद्धधर्मसूत्र 57. 16.

food of these four and of his own barber. Haradatta on Gaut. 17. 6 and Aparārka (p. 344) remark that a brāhmana can take the food of these persons among śūdras only in the event of extreme calamities. From this it appears that up to the 12th century A. D. the peremptory prohibition contained in this text was either unknown or was not much respected. The exclusiveness of caste in matters of food and marriage was made more strict by the Kāṭvaṛjya texts. Vide above (pp. 869 and 885) as to how Parāśara himself was overruled by this text.

32. 'Pilgrimages to very distant holy places' (I. 26).

A brāhmana was called upon to tend his Vedic or grhya fires. If he went to distant places on pilgrimage this duty would be interfered with. It is provided by Āp.¹⁸⁵⁰ Sr. IV. 16. 18 that even when on a journey the *agnihotrin* has, after turning his face in the direction of his fire altar, to go mentally over the whole procedure of his daily fire worship and the Darsa-pūrpamāsa. The Gobhila-smṛti II. 157 says the same. The Smṛtikaustubha¹⁸⁵¹ says that this prohibits pilgrimage to holy places beyond the sea or on the borders of Bharatavarṣa. This text prohibits a brāhmana from going to distant places on pilgrimage, but it does not prevent him from undertaking a journey for earning wealth for performing sacrifices. K. V. N. (folio 10a) quotes a text of Satyavrata to this effect.

33. 'The rule that a pupil should habitually observe the same behaviour towards the wife of the *guru* as towards the *guru* himself' (I. 27). Āp. Dh.¹⁸⁵² S. 1. 2. 7. 27, Gaut. II. 31-34, Manu II. 210, Viṣṇu Dh. S. 32. 1-2 prescribe that a student should perform the same acts of honour and obedience towards the wife or wives of his teacher as towards the teacher (except holding her feet in doing obeisance and eating the leavings of the food). As students were often grown-up young men and the teacher's wife might often be a young lady, Manu II. 212,

1850. यमस्य विद्वारमभिसुखो यात्रमानं जपति । आप. श्री. IV. 16. 18 ; मनसा नैत्यप्ये कर्म प्रपन्नञ्जयतः । उपविश्य ध्यायिः सर्वं यथाकालमनुब्रूयेत् । गोभिल II. 157.

1851. या च यत्नतश्चेद्व्रततीर्थयात्रा परित्यज्य सा कर्तव्येति । स्मृतिको. p. 478 ; धनान्प्राप्तयेति युक्तः यवासो क्षत्रिहोत्रिणः । धर्मैर्वसन्मनोविद्या तीर्थयात्रा न तु ब्रजेदिति सत्यव्रतस्मरणम् । कालियवर्णनं. folio 10a.

1852. अथत्रोपसङ्गग्रहणानुच्छिन्नाज्ञानाचार्यैश्चाचार्यद्वारे इति । आप. ध. 1. 2. 7. 27 ; तद्गार्थपुत्रेषु चैवम् । गोविन्दशास्त्रस्यापननाधनपादुभ्याल्लोभान्दोषसंग्रहणानि । विप्रोप्योपसंग्रहणं मुक्त्यार्थम् । गो. II. 37-39.

216, 217 (that are the same as Viṣṇu Dh. S. 32. 13-15) provide that a pupil full twenty years old should not show honour to the young wife of his teacher by clasping her feet, but that he may prostrate himself on the ground before the teacher's young wife in performing obeisance and that he may hold her feet in obeisance only (once) when he returns from a journey. This text accepts the principle underlying the special rules laid down by Manu and Viṣṇu and prohibits the daily touching of the feet of the guru's wife on the part of the pupil. The Sm.¹⁸⁵³ Kau. and Dharmasindhu (III p. 355) hold that this sets aside the rule laid down in Yāj. I. 49 that a perpetual student may stay till his death with his teacher or with the teacher's son or (in default of both) with the teacher's wife.

34. 'The modes of maintenance conceded to brāhmanas in times of distress (or calamity)' (I. 28).

The special modes of maintenance prescribed for brāhmanas were receiving gifts, teaching the Veda and officiating as priests (Gaut. X. 2, Āp. Dh. S. II. 5. 10. 5, Manu X. 76, I. 88, Vas. II. 14, Yāj. I. 118). But it was recognised from very ancient times that if a brāhmaṇa could not maintain himself by following the above modes of earning wealth he could in a season of distress pursue the avocations peculiar to a kṣatriya or vaiśya (Gaut. VII. 6-7, Baud. Dh. S. II. 2. 77-81, Vas. II. 22, Manu X. 81-82, Yāj. III. 35)¹⁸⁵⁴. Vide H. of Dh. vol. II. pp. 118-133 for detailed treatment of this matter and for the restrictions imposed even when brāhmanas were allowed to follow the avocations of kṣatriyas and vaiśyas. The Kalivarjya prohibition is merely one on paper. From ancient times till now brāhmanas have pursued all sorts of avocations and hardly any importance has been attached to this dictum.

35. 'Not accumulating any wealth (or grains) for the morrow' (I. 28). Manu IV. 7 and Yāj. I. 128 provide that brāhmanas are of four kinds, viz. those who accumulate grain of the capacity of a *kusāla*, those who accumulate grain of the capacity of a *kumbhī*, those that accumulate grain enough to satisfy

1853. गुरुपत्नीसमीपे गुरुद्वयभावे चिरं निधतिविहितं सा विधिपद्धते। न तु गुरुवत्यति-
... इति मन्त्रका पूजा 'वृत्तिशीलतेति पदेन पूजानभिधानात्'। स्मृतिकौ. p. 478; but
कलियुग्मवि. folio 10a assays, शिष्यस्य गुरुपत्नीं गुरुवद् वृत्तिः—गुरुवत्यतिपूज्यास्तु सर्वथा
गुरुपतिवत् इत्यादि मन्त्रकाः।

1854. लाघेण कर्मणा जीवेद्विज्ञां वाप्यापदि द्विजः। निस्तीर्थं तामघातमानं पाव-
यित्वा न्यसेत्पथि ॥ या. III. 35.

their needs for three-days and those who do not collect grain even for the next day. The *smṛtis* prescribe that each later one is superior in merit to each preceding one. The commentators differ as to the meaning conveyed by *kuṣūladhānya* (some holding that it means one who has accumulated grain for three years, while others say it means one who has grain for 12 days) and *kumbhidhānya* (a person accumulating grain for a year, or grain for six days). Vide H. of Dh. vol. II. p. 110, note 234 and p. 641 note 1502. The *Mit.* on Yaj. I. 128 says that the advice not to accumulate corn even for three days or one day is not addressed to all *brāhmaṇas*, but to those only who are called *yāyāvara*¹⁸⁵⁵. This explanation of the *Mit.* indicates that the *Kali-varjya* text on this point was either not known to the *Mit.* or was not much thought of by it. The *Kali-varjya* text provides that the ideal of extreme poverty and absence of acquisitiveness for *brāhmaṇas* was not to be insisted upon in the *Kali* age.

36. 'The acceptance of the kindling of a log of wood (i. e. setting up sacred Vedic fire) at the time of the *homa* of *Jātakarma* for the purpose of securing long life to the child born to a person' (I. 29). The *arāṇis* are two logs of *Aśvattha* tree from which fire is produced by attrition, which (fire) is used for kindling the *gārhapatya* fire. In certain *śākhās*, it is the practice to kindle fire from *arāṇis* and to use it for the *homa* in the *Jātakarma* rite. This fire was to be used in the subsequent rites for the child such as *cūṣa*, *upanayana*, marriage. It was supposed that this enabled the child to live long.¹⁸⁵⁶ The *Saṁ.* K. quotes a *parīkṣita* text to this effect.¹⁸⁵⁷

37. 'Constant journeys by *brāhmaṇas*' (I. 30). The *Mahābhārata* (*Śānti* 23. 15)¹⁸⁵⁸ says, 'As a snake swallows mice hiding in holes, the earth swallows two persons viz. a king who does not fight (an invader) and a *brāhmaṇa* who does not engage

1855. For the two kinds of *brāhmaṇas*, viz. *śūlīna* and *yāyāvara*, vide H. of Dh. vol. II pp. 641-42 n. 1502-1505.

1856. कश्चिन्नाश्वारो जातकर्महोने यजान्निवर्धमरणिपरिवहो विहितः । कुण्डमष्टेन नि. सि. pp. 1299-1300.

1857. परिशिष्टान्तरे तु कुमारस्य जातस्य अर्णी योयथाकुमुदान् । आहूय चोत्तरा-
मणी वाग्यामसि तु मण्यते । ... तस्मिन् कुमारवर्माणि विनाशान्तानि कारयेत् ।
सं. श्री. under जातकर्म.

1858. धूम्रिणी निमिरिनि सर्पो विलसथानिव । राजानं चाविरोद्धारं बाह्वर्णं चाध्रवा-
सिन्म ॥ *Śānti* 23. 15. Vide also *Sabha* 55. 14, *Śānti* 57. 3 and *Anuśāsana* 36. 16 for almost the same words.

in travel' (for acquiring learning from famous teachers). This text only forbids taking aimlessly to long journeys but not those for study or for religious purposes.

38. 'Blowing on fire with the mouth' in order to kindle it into flames (I. 30). Gaut. IX. 32. Manu IV. 53 and Brahmapurāṇa 221. 102 forbid the blowing on fire with the mouth (as in doing so it is likely that drops of saliva from the mouth may fall into the fire and pollute it). Haradatta on Āp. Dh. S. I. 5. 15. 20 notices that in the Vājasaneyi Śakha it is said that fire should be kindled into flames by blowing upon it with the breath from the mouth since it sprang from the mouth of the Creator (as stated in the Puruṣasūkta, Rg. X. 90. 13). Therefore, acc. to Haradatta and the Gobhila-smṛti (I. 135-136)¹⁸⁵⁹ the *śrauta* fire could be kindled by blowing upon it with the mouth, but *smṛta* fire or ordinary fire should not be kindled in that way (but only by using a fan or a bamboo cylindrical piece). The Kalivarjya text forbids blowing with the mouth even on *śrauta* fire.

39. 'Allowing social intercourse to women who have become polluted by rape and the like (when they have performed *prāyaścitta*) as prescribed in the *śāstras*' (I. 31).¹⁸⁶⁰ Vas. 28. 2-3 state, 'when a woman is polluted by being raped or kidnapped by a thief, she should not be abandoned; one should wait till her monthly illness (making her undergo certain expiations till then) and she becomes pure after it.' Atri (V. 2-3) has the same verses, which are quoted (from Vas.) by Viśvarūpa on Yaj. III. 256 (p. 133. Tri. ed.) and explained at great length. The Matsyapurāṇa 227. 126 is liberal enough to say that the man who commits rape should be punished with death but the woman raped incurs no blame. Parāśara (X. 27) provides that if a woman is raped by an evil-doer only once she becomes pure by undergoing the *Prājāpatya* expiation and after the following monthly illness. Even so late a *smṛti* writer as Devala provides that if a woman of any class is raped by *mlecchas* and she conceives she can be purified by the expiation of *Sāntapana*.

1859. सुखेनेति धर्मस्यार्थं सुखादन्वेषोदयजायते । नास्ति सुखेनेति च पञ्चांगिको योजयन्ति तद् ॥ गोमिलस्मृति I. 136. This is q. by the स्मृतिच. I. p. 212. नास्ति सुखेन is मनु IV. 53.

1860. योषा कर्म विधत्ते वा म्लेच्छात्कामादकामकः । नाङ्गणी सतिषा वैषा शुद्धा यत्तेरा च वा । अमृत्यममृतं कुर्यात्तस्याः शुद्धिः कर्म भवेत् । कच्छं साम्प्रतं शुद्धिर्धर्म-योनिस्य पाप्मनम् ॥ देवत 48-49.

But this text is harsher on such innocent and unlucky women when it says that they cannot be restored to social intercourse even after undergoing expiation.

40. 'Begging of food by a *sannyāsin* from members of all varṇas (including śūdras) according to the rules of the sāstra' (I. 32). The Sm. M. p. 201 (on varṇāśrama) quotes Kāthaka Brāhmaṇa,¹⁸⁶¹ Āraṇi Up., Parāśara (in prose) to the effect that a *yati* may beg for food from members of all varṇas. Baud. Dh. S. II. 10. 69¹⁸⁶² also quotes a verse which allows the begging of food from all varṇas to a *yati*. Vaa. X. 7 requires a *yati* to beg at seven houses not selected beforehand and in X. 24 states that he should subsist on what food he gets at the houses of brāhmaṇas.¹⁸⁶³ The present text requires even the *yati* to observe caste rules as to food.

41. 'Not using for ten days fresh rain water' (I. 33). Haradatta on Āp. Dh. S. I. 5. 15. 2, Bhaṭṭoji on Catur. (p. 54), Sm. Kau. p. 479 quote a verse, 'she-goats, cows, she-buffaloes and brāhmaṇa women become free from impurity (due to delivery) after ten nights and so does fresh rain water accumulated on the ground'. According to this the long period of ten days in the case of rain water is set aside. But Bhaṭṭoji notes that according to another smṛti 'rain water falling at the proper season is pure, but it is not to be used for drinking for three days; when rain falls at an unusual season rain water is impure for ten days and if a man drinks it within that period he should abstain from food for one day and night'. Bhaṭṭoji remarks that the Kālivariya text only sets aside waiting for ten days, but does not set aside the rule against drinking it for three days.

42. '(Payment of) the fee demanded by the teacher' at the end of the period of brahmacarya (I. 33).

1861. काठकब्राह्मणे 'चतुर्वर्णेषु भैक्ष्यत्वं चरेत् पाणिपात्रेणाशनं कुर्वाद्भैक्षयत्वा-
न्निवारणान्नवारणार्थं यथा भेदोद्दिष्टं जायते'. स्मृतिस् (वर्णः.) p. 201.

1862. भैक्ष्यं वा सर्ववर्णेषु यथाकं वा द्विजातिषु । अपि वा सर्ववर्णेषु न यथाकं
द्विजातिषु । यो. ध. सू. II. 10. 69.

1863. सप्तागारान्यसङ्कल्पितानि चरेद्विश्राम् । आश्रमकुले वापहमेन सङ्गृहीतं
सायं यामयुगमसर्जम् । वसिष्ठ X. 7 and 24.

1864. अत्रा गावो महिषश्च ब्राह्मणी च मनुजिकाः दशरथेण द्रुष्यन्ति पुमिहं च
नवोदकम् ॥ q. by हरदत्त on आप. ध. सू. I. 5. 15. 2, 'आले नवोदके द्रुष्ये न विभेदा
इयं च तत् । अकाले तु दशांश्च स्थायीत्या माद्यादहनिशम् ॥ इति स्मृत्युक्तस्य दशाहनि-
वेधपर्यं प्रतिपत्तयो न तु व्यवहतिषेधस्येति दशंयति । भट्टोजि on चतुर्षि, p. 53.

The ancient practice was to make no agreement as to fees for teaching. Vide Br. Up. IV. 1. 3. Gaut. (II. 54-55) prescribes¹⁸⁶⁵ that at the end of his studies the student should request the teacher to accept the wealth that he could offer or ask the teacher what should be given and after paying or doing what was required by the guru or if the teacher permitted him to go without demanding anything the student should take the ceremonial bath. Vide Manu II. 245-246 and H. of Dh. vol. II. pp. 360-361 for details. Yaj. I. 51 provides that at the end of his studies the student may give to the teacher what he desires (or a cow) according to his ability or may with his permission take the ceremonial bath (without paying anything). On account of these provisions we have stories in the ancient literature that very rarely teachers or their wives made fanciful demands. This Kalivariya text only sets aside the requirement of paying what the guru demands, but does not prohibit the voluntary gift of a fee by the student.¹⁸⁶⁶

43. 'The engagement of a śūdra for such acts as cooking and the like in the houses of brāhmaṇas and the rest' (I. 34). Āp. Dh. S. (II. 2. 3. 1-8) requires that¹⁸⁶⁷ the food for Vaiśvadeva should be prepared by pure men of the first three varṇas and also optionally allows a śūdra to be a cook for an ārya provided he is under the supervision of men of the first three varṇas, provided he sips water whenever he touches the hair, any limb or his garment, provided he cuts the hair (on his head and his body), the beard and nails every day or every 8th day of the month or on the new and full moon day and provided he bathes with the clothes on. It is this permission that is set aside by this Kalivariya text.

44. 'Suicide of very old people by falling into fire or from a precipice' (I. 35).

This is analogous to No. 13 above. Atri did not condemn suicide in certain cases. He states,¹⁸⁶⁸ (verses 218-219) 'if one be

1865. विद्यान्ते सुवरपेन निमन्त्रयः । कुत्वास्तुज्ञातस्य वा स्थानम् । मौ. II. 54-55.

1866. विद्यान्ते सुवरपेन वा दक्षिणादानं यथा सागदीपनवे अङ्कुरणेन मृतपुत्रस्य । न तु मृते दक्षिणामात्रं चोदितेति पदवैचर्यापत्तेः । स्मृतिकौ. p. 479.

1867. आर्षाः यथा वैश्वदेवेऽन्नसंस्काराः स्युः । ... आर्षाधिष्ठिता वा शुद्धाः संस्कृताः स्युः । तेषां न शवाश्चमनकल्पः । अधिकमार्हः केशदमस्तोमनशापनम् । उदकोपरधर्मे च सह नामसा । अपि वाहमोर्ध्वे परेण वा यपेरम् । आप. ध. सू. II. 2. 3. 1-8.

1868. इहः कौचस्मृत्यैर्लुक्तः शरासथातन्त्रिकृत्तः । आत्मानं पातयेद्यस्य भुवम्भ्य-
नक्षत्राभ्युभिः । तस्य विराजमानोचं द्वितीये त्वन्धिमज्जयम् । तृतीये नृदके कुत्वा चतुर्थे
मज्जयाम्भरेत् । अत्रि 218-219 q. by मिथ्यालिखि on मनु V. 89, निता. on वा. III. 6,
अपवादः p. 942.

old (beyond 70), if one cannot observe the rules of bodily purification (owing to extreme weakness), if one is so ill that all medical help is discarded, and if one in these circumstances kills himself by throwing himself from a precipice or into fire or water or by fasting, mourning should be observed for him for three days and śrāddha may be performed for him.' Aparārka (p. 536) quotes several smritis to the effect that a very old man or one suffering from very serious illness, one who has no desires left and has carried out his tasks may bring about his death by entering fire or water or falling from a precipice and he will incur no sin. Vide H. of Dh. vol. II. pp. 926-927 for further details. This text may also be taken as forbidding suicide by falling from a precipice or into fire as an expiation in the case of those that are guilty of mahāpātakas knowingly committed. The Mī. on Yaj. III. 226 quotes a smṛti to this effect¹⁸⁶⁹. The Śuddhitattva holds (pp. 284-285) that suicide by entering water and the like is allowed in Kāṭya only to śūdras and forbidden to brāhmanas and others.

45. 'The performance of ācamana (purificatory sipping of water) by śiṣṭas in as much water as is sufficient for slaking the thirst of a cow' (I. 36).

Manu V. 128, Vas. III. 35, Baud. Dh. S. I. 5. 65, Yaj. I. 192, Viṣṇu 23. 43 provide¹⁸⁷⁰ that water collected on the ground is pure (and may be used for ācamana) provided it is sufficient in quantity to slake the thirst of a cow. But this text forbids on hygienic grounds the use of small quantities of water collected on the ground for sipping and similar purposes.

46. 'The residence of an ascetic in the house near which he happens to be in the evening' (I. 38).

Acc. to Āp. Dh. S. II. 9. 21. 10 and Manu VI. 43, 53-56, an ascetic was to kindle no fire, was to be houseless and was to beg only once a day in the afternoon or evening when no smoke ascends from the kitchens of people, when the embers have been extinguished, when people have finished their meals &c. Vas. (X.

1869. यः कामतो महापापं नरः कुर्वन्त्यप्येवम् । न तस्य निष्कृतिर्हता भूयश्चिप्यन-
नादते ॥ q. by Mī. on Dh. III. 226. जलपर्वणादिकं तु कलौ शुद्धयेव । आह्वयादीनां तु
आदिभिराग्नेन सगुणाद्यौच्यव्यवहारोऽप्येव निवेद्यते । शुद्धितत्त्व pp. 284-285.

1870. शुचिं गोतृनिष्कृतोयं पृथुतिरयं महीगतम् । वा. I. 192; पवरादपि वा
गोतृनिष्कृतमयोः शुः । वसिष्ठ III. 33; आपः पवित्रं धूमिगता गोतृनिष्कृता जायते ।
बौ. ध. सु. I. 3. 63.

12-15) provides¹⁸⁷¹ that a *sannyāsin* was to change his residence frequently, was to stay at the boundary of the village or in a temple, or in an empty house or at the bottom of a tree and should constantly live in a forest. Śāṅkha (VII. 6) states that an ascetic should stay in an empty house or he may stay wherever he may be when the sun sets. This provision of Śāṅkha is set aside by the Kalivarjya text. Another meaning of the words, according to Kṛṣṇabhaṭṭa on the Nir. 8. (p. 1310), is that this runs counter to the recommendation of Manu VI. 56 that an ascetic should go for begging to the houses in a village in the evening when all smoke from kitchens has ceased i. e. by this text he is allowed to beg in the noon. In a way this appears to be a better explanation.

The above is a complete list of all Kalivarjyas quoted from the Ādityapurāṇa (except one or two). Some of the Kalivarjyas not included here, but included in other texts cited above will also be now set out for the sake of completeness of treatment.

47. 'Resorting to *sannyāsa*'. Vyāsa quoted above (n. 1793) forbade *sannyāsa* in the Kali age after 4400 years of it had elapsed, but then Devala¹⁸⁷² made an exception to this extent that as long as the division of society into four varṇas existed and as long as the Veda was studied *sannyāsa* could be resorted to even in Kali. The Nir. 8. explains that what is forbidden is the *sannyāsa* with three danda and not the *sannyāsa* with one danda. Baud. II. 10. 53 (ekadandī vā) gives an option that a *sannyāsin* may carry three staffs or one, while Yaj. III. 58 speaks of a *yati* as only tridandī. Danda means a staff and also 'restraint, curbing'. Manu XII. 10 (same as Dakṣa VII. 30) declares that that man is called *tridandī* who has restraint over his body, speech and mind. Dakṣa¹⁸⁷³ also says that a *yati* is not called *tridandī* by carrying three bamboo staffs, that he is called *tridandī* who has

1871. अनित्यं वसतिं वसेत् । ग्रामान्ते देवगृहे शूरवागारे वा वृक्षमूले वा । अरण्य-
नित्यः । वसतिः X. 12-13 and 15 ; शूरवागारनिकेतः स्वायज्रसायंशुद्धौ मुनिः । शङ्ख
VII. 6. The words वससायंशुद्धौ मुनिः occur also in वसपर्व 12. 11. शुद्धशब्दो
शूरपर्वेश्वरः सार्वशब्दो यद्वेषसायकः । ... भिक्षाद्यर्थं भविष्यत् तत्र काले शूरवासो न वृक्ष-
इति तात्पर्यम् । अत एव मुनिः । ग्रामं पविशेद्वासायमिति । स्मृतिकौ. p. 479.

1872. वायव्यर्णविभागेति पाठद्वयः प्रवर्तते । तावत्प्रवासोऽग्निहोत्रं च कर्तव्यं तु कालौ
युगे ॥ देवल q. by नि. सि. III पूर्वार्धे p. 370, स्मृतिह. (वर्णाश्रम p. 176 quoting
it as from व्यास), पतिपर्वसंस्कृत pp. 2-3.

1873. वैष्णवेन विद्वद्भेन न विद्वद्भेति कथ्यते । अथवातमवृणुषुको वा स विद्वद्भेति
कथ्यते । वृक्ष VII. 29. Several verses of वृक्ष VII are quoted by अपराधे on p. 953.

the spiritual restraint in him (v. 29). In I. 12-13 Dakṣa says that just as a girdle, deer skin and a wooden staff are the outward signs of a vedic student, so three staffs are the peculiar sign of a yati. Vide H. of Dh. vol. II. pp. 937-938 for further details. If the Kaliyuga text were meant to forbid sannyāsa altogether, it must be said that it was never honoured and even now thousands become sannyāsins every year. If, as the Nir. S. says, this text only forbids the carrying of three dandās, it is a meaningless prohibition, giving importance only to outward symbols and not to the substance of the matter.

48. 'The observance of *agnihotra*' or 'the acceptance of three fires'. Vyāsa (n. 1793) forbade the performance of śrauta *agnihotra* along with *sannyāsa* in Kali, but an exception was made by Devala in favour of its observance as also of resort to sannyāsa on the grounds stated above (in No. 47). Some digests and authors such as the Nirayāsindhu¹⁸⁷⁴ and Bhaṭṭoji explain that *agnihotra* of the *sarvādhāna* type is forbidden in Kali, but that of the *ardhādhāna* type is allowed. *Agnihotra* means '*adhāna*', that is, setting up of the śrauta fires. When a man consecrates the three śrauta fires he may do so with half of his smārta fire and keep up the other half of the smārta fire. This is called *ardhādhāna*. If he does not keep the smārta fire separate, it is *sarvādhāna*. Laugākṣi quoted by the Nir. S. (III. p. 370), Bhaṭṭoji and others states this. The Mīt. on Yāj. III. 45 mentions these two modes. Therefore, according to these explanations, *sarvādhāna* was allowed in former ages (and acc. to one interpretation up to 4400 years of Kali), while in Kali (or at least after 4400 years of Kali) only *ardhādhāna* is allowed.

49. 'Human sacrifice' (vide note 1798 giving extract from Nārada-purāṇa).

The Tai. Br.¹⁸⁷⁵ (III. 4. 1-19) contains a description of the procedure of human sacrifice. The oldest texts even do not show that a human being was killed. The whole procedure is

1874. अथांधानं स्मृतं भौतस्मान्मयोस्तु दृष्टकृत्स्नः । सर्वाधानं तपोरैककृत्स्नः । पूर्व-
पुत्राभया । श्रौतासि १. 10 स्मृतिच. acc. 10 निर्णयसिन्धु III. p. 370. अथ पूर्वपुत्रा-
भिमेते श्रौतासिवाक्ये पूर्वपुत्रानि कृतादीनीत्येकोर्थः । अन्ये तु पुण्यस्य पूर्व कर्तेः पूर्वो भागः
स चत्वार्यंशुसह साधयति पूर्वोक्तवाक्याच्चतुर्व्यवहारिणश्चतुर्वर्षाच्छ्रद्धः तस्मिन् भागे सर्वाधानं
कर्वे तदुक्तं तु पाण्डुरंगविभागोक्तं वाक्यं तु वर्णविभागपर्यन्तमथांधानमित्याहुः । नि. सि.

1875. ब्रह्मणे ब्राह्मणमात्रभते अवाध राजन्पम् । मरुद्ग्नो वैश्यम् । तपसे शूद्रम् ॥
ते. जा. III. 4. 1.

symbolical. The Vaj. S. (XXX. 5 ff.) has many passages in common with the Tai. Br. The Tai. Br. III. 4. 1 (= Vaj. S. 30. 5) begins, 'the brāhmaṇa should be offered to brahman (spiritual power), the kṣatriya to kṣatra (military power), the vaiśya to the Maruts' &c. Acc. to Āp. Śr. XX. 24, a brāhmaṇa or kṣatriya performs this sacrifice, whereby he attains power and valour and all prosperity. There are eleven sacrificial posts and eleven animals to be offered to Agni and Soma. After the rite of *pariyajikarava* is performed on the brāhmaṇa and others, they are presented to the several deities and then discharged from the sacrificial posts, eleven goats are killed and oblations of their flesh and limbs are offered. Acc. to the com. on Vaj. S., it is begun on the 10th day of the bright half of Caitra and goes on for 40 days, which are occupied with 23 *dikṣās*, 12 *upavāsas* and five *sūtyas* (days on which soma is extracted). After this *yāga*, the *yajamāna* usually resorted to a forest as a *sannyāsin*.¹⁸⁷⁶

50. 'Aśvamedha' (n. 1798). The Tai. S. V. 3. 12. 2 states,¹⁸⁷⁷ 'he who performs the Aśvamedha becomes free from (the sin of) brāhmaṇa murder'. In spite of this Vedic authority the Brhan-Nāradya and other purāṇas prohibited it. But no one heeded this prohibition and numerous historic kings performed this sacrifice from at least 200 B. C. to Jayasing in the 18th century A. D. Vide H. of Dh. vol. II. pp. 1238-1239 and pp. 70-71 above for numerous historical performers of Aśvamedha.

51. 'Rajasūya' (acc. to the Garuḍapurāṇa, p. 929 above). This was a very complex rite extending over two years and could be performed only by a kṣatriya. Vide H. of Dh. vol. II. pp. 1214-1223 for a brief description. The Rjasūya was performed by the Kalinga Emperor Khāraveja as he proclaims in his Hāthigumpha Inscription (E. I. vol. XX p. 71 at p. 79) and by queen Nayanikā as stated in the Nāpāghat Inscription (A. S. W. I. vol. V. p. 60).

52. 'Perpetual studenthood' (n. 1798). Vedic students were of two kinds, *upakurvāṇa* (who offered some return or fee at the time when they returned home) and the *naṣṭhika* (who remained students till death). Vide p. 764 n. 1471 above.

1876. त्रैपालवीपपोद्वन्माव दृधमरवीष्वर्गित्तमारोकोत्तरभारतवर्णेनाविचमुत्तरवापा-
रुपममतिष्ठ । दानं वा दधिप त्रैपालवीपवा यजेत । आप. श्री. XX. 24. 16-17.

1877. तस्मिन् ब्रह्महत्यां योऽभ्यसेधेन यजते । तै. सं. V. 3. 12. 2.

Hārīta, Dakṣa¹⁸⁷³ (I. 7) and others mention these two varieties, while Yāj. I. 49, Vādavyāsa I. 41 and Viṣṇu Dh. S. 28. 46 name and describe the *naisthika*. Manus. II. 243-244, Yāj. I. 49-50, Vas. VII. 4-5 provide that a perpetual Vedic student should stay with his teacher till his own death, that on the teacher's death he should stay with the teacher's son or the teacher's wife or should tend fire, that if he curbs his senses till his death, he reaches the world of *brahma* (immortality) and is not born again. This was a very difficult mode of life, there were great temptations as the flesh is weak and therefore the Bṛhan-Nāradya and others prohibited perpetual studenthood. Some works such as the Madanapārijāta (p. 16), the Kālivarjyavinirṇaya of Dāmodara, and the Nir. S. read 'dirgha-kālam brahmacaryam' in place of 'naisthikam brahmacaryam' in the Bṛhan-Nāradya.

53. 'Brahmacarya for long periods' (n. 1799). The Baud. Dh. S. (I. 2.1-5) declares, "the term of studentship for Veda study as observed in ancient times lasted for 48 years, or 24 years, or 12 years for each Veda or at least one year for each *kāṇḍa* (of the Tai. S.) or it lasted till the Veda was committed to memory, as life is evanescent and as the Veda ordains 'let him kindle the sacred fires while his hair is still black'." The Āp. Dh. S. (I. 1. 2. 11-16) provides that the student's stay with the teacher's household should be 48 years, 24 years or 12 years at the lowest. Manus. III. 1 also states that the vow of studying the three Vedas under a *guru* must be observed for 36 years or for half of that time or for a quarter of it or until the student has mastered (the Veda). These long periods of 48 years, 36 or 24 years for Veda study (before a man could become an householder) are here forbidden in Kali. This was nothing new. Yāj. I. 36 had allowed 12 years for each Veda or five and if a man did not want to study all vedas but only one he could finish his studenthood in five years. Only an extremely small number could have spent 48 or 36 years in Veda study. Sabara on Jai. I. 3. 3 held that this text of Baud. was opposed to the *śruti* about kindling fires when a man was a young householder with black hair and was to be discarded. Vide pp. 832-834 above for a

1873. द्वितीयो ब्रह्मचारी उपकुर्वाणो नैष्ठिकश्च । ततोऽप्यकुर्वाणो भ्यासवातः । निह्यो
येऽप्येवाऽग्नीरन्विताश्च दुरावासीत । इति च q. by अपराज्ज p. 71: द्वितीयो ब्रह्मचारी
स्वाध्यायोऽप्यकुर्वाणकः । द्वितीयो नैष्ठिकश्चैव तस्मिन्नेव ग्रामे तिष्ठतः ॥ दृष्ट I. 7. q. by
स्मृतिच I. p. 67.

discussion of this. The authors of the Samayamayūkha and the Sm. Kau. both of whom had before them the reading 'dirghakālam brahmacaryam' held that this prohibition was aimed at the words of Ap. and Baud. and that the vow of perpetual studentship which was undertaken with a special purpose in view (viz. realization of *brahma* and non-return to *samsāra*) was not prohibited by the Kalivarīya text and that there was nothing wrong in the practice of perpetual studentship among the Dravidas.

54. 'Animal sacrifice.' In the Mārkaṇḍeya as quoted in Aparārka p. 929 above animal sacrifice was forbidden in the Kali age. Though popular feeling had gradually veered round to the view that meat should not be offered in śrāddhas, in madhuparka (No. 22 above), yet animal sacrifices were performed at all times and are even now performed, though very rarely.

55. 'Intoxicating drinks (*madya*)'. There were startling vicissitudes in the attitude to intoxicants.

In Vedic times *soma* was a beverage drunk by the priests and *surā* was a beverage for common men and usually not meant to be offered to the gods. Soma and *surā* are sharply distinguished (vide Tai. S. II. 5. 1. 1, Vaj. S. 19. 7, Śat. Br. V. 1. 5. 28). The Śat. Br. (V. 1. 5. 28) has the striking antithesis 'For, Soma is truth, prosperity, light; and *surā* is untruth, misery, darkness'. In the Sautrāmaṇi ¹⁸⁷⁹ a brāhmaṇa had to be hired for drinking the dregs of *surā* offered in it and if a brāhmaṇa could not be found the *surā* was poured on an ant-hill (Tai. Br. I. 8. 6 and Śābara on Jai. III. 5. 14-15). It appears from the Kāthaka-saṃhitā XII. 13 that ¹⁸⁸⁰ brāhmaṇas had by that time come to regard the drinking of *surā* as sinful. From Chān. Up. V. 10.9 it appears that a drinker of *surā* was enumerated among five grave sinners. In the Āśv. gr. II. 5. 3-5 it is said that in the rites of the Anvastakā day when pindas are offered to the male ancestors, the female ancestors viz. the mother, the paternal grandmother and great-grandmother are offered *surā* and the scum of boiled rice in addition ¹⁸⁸⁰. The Nir. S. (III.

1879. सत्माह जातुणः सुरां न पिबति पाप्मना मेकं सुखा इति । काठकसं. XII. 12, quoted by the उपनिषदिक on जै. I. 3. 7 p. 210 and by शङ्कराचार्य on वेदान्तसूत्र III. 4. 31.

1880. पिबन्ति पितृकल्पेन । तुला मधुसम्पन्नं पितृभ्यो दद्यात् । कौशिक्यं सुरानाचा-
मनेपिबिष्य । भाष्य. सु. II. 5. 3-5.

p. 367) refers to this passage of the Āsv. Gr. and holds that the Kāṭhavarjya text against intoxicants forbids this also.

Madya is a generic term applicable to all intoxicating drinks; *surā* is said to be of three kinds, viz. that prepared from molasses, that from honey (or madhūka flowers or from grapes) and that from corn flour (Manu XI. 94, Viṣṇu Dh. S. 22, 82 and Samvarta 117). The Viṣṇu Dh. S. (22, 83-84) specifies ten kinds of *madya*, all of which a brāhmaṇa was not even to touch. Gaut. II. 25¹⁸⁸¹, Āp. Dh. S. I. 5. 17, 21, Manu XI. 95 forbid all kinds of *madya* to brāhmaṇas at all stages of life. Āp. I. 7. 21. 8, Vas. I. 20, Manu XI. 54, Viṣṇu Dh. S. 35. 1 hold that the drinking of *surā* is one of the five grave sins (mahāpātakas), while Yaj. III. 227 employs the word 'madya' in place of *surā* in this connection. Baud. Dh. S. I. 1. 22 however notes that among the five practices peculiar to the brāhmaṇas of the north was that of drinking rum and Baud. condemns it. The verses of Manu XI. 93-94 about the three kinds of *surā* have been the subject of frequent and varying interpretations. Viśvarūpa on Yaj. III. 222, the Mit. on Yaj. III. 253, Aparārka p. 1069 and others establish that the word 'surā' primarily applies to *paistī* (liquor prepared from flour) alone, that *paistī* is forbidden to all brāhmaṇas, ksatriyas and vaiśyas, that it is the drinking of *paistī* alone that constitutes a mahāpātaka, that all intoxicating drinks are forbidden to brāhmaṇas in all ages, but intoxicants other than *paistī* (such as those prepared from molasses or madhūka flowers) are not forbidden to ksatriyas and vaiśyas. Manu XI. 93 says that *surā* is the refuse of cooked food (rice); therefore members of the three higher castes should not drink *surā*. This clearly shows that Manu took *surā* as meaning only *paistī* (liquor prepared from rice flour). The Viṣṇu Dh. S. (22, 84) expressly says that ksatriyas and vaiśyas are not polluted by touching the ten kinds of *mādyas* specified by it. In the Udyogaparva (59. 5) both Vāsudeva (Kṛṣṇa) and Arjuna are described as intoxicated by drinking the liquor prepared from honey and the Tantravārtika establishes that there was nothing wrong in this as both were ksatriyas. Intoxicants were not forbidden to śūdras. Brahmacārins of whatever varṇa had to abstain from intoxicants of all kinds. Aparārka¹⁸⁸² (p. 63)

1881. मद्यं नित्यं ब्राह्मणः । गौ. II. 25 : सर्वे मद्यमपेयम् । आप. प्र. सू. I. 3. 17. 21.

1882. मद्यं नित्यं ब्राह्मणः । नित्यमिति पञ्चमात्मकं कुतश्चादावपि ब्राह्मणेन वज्रं क्षत्रियैश्चान्यो तु कलत्रेण । यद् ब्राह्मणपुराणं ... तदाश्वमेधौ मद्यं च कलौ वज्रं द्विजातिभिः । अपारार्क p. 63.

after quoting the *Brahmapurāṇa* states that intoxicating drinks were forbidden to the three varnas in Kali and to brāhmanas in all yugas (ages). But this is opposed to tradition. The *Ādiparva* (chap. 76) narrates¹⁸⁸³ that Śukracārya prohibited for the first time brāhmanas from drinking intoxicants (vide H. Dh. vol. II pp. 792-799 for detailed discussion of this topic). The *Kalivarjya* text forbids the drinking of intoxicants to all the three twice-born classes. But ksatriyas and vaiśyas pay scant attention to this prohibition and even some brāhmanas in these days have taken to drink as a fashionable indulgence. The K. V. N. (folio 5a), Kṛṣṇabhṭṭa¹⁸⁸⁴ and Sm. Kau. note that in the śakta treatises (called *Vāmāgama*) madya is allowed to be offered to the idol for all the three varnas and to ksatriyas in the propitiatory rites for *Vināyaka* and for birth on the *Mūla* constellation but this *kalivarjya* text forbids all that.

An analysis of these 55 *kalivarjyas* yields very interesting results. About one-fourth out of the above 55 relate to Śrauta matters. There are several texts forbidding *Agnihotra*, *Āsvamedha*, *Rājasūya*, *Puruṣamedha*, *sattras*, *Gosava*, animal sacrifices, while a few others are concerned with matters of detail in sacrifices (vide No. 11, 14-16, 29-30, 38, 48-51, 54). The first nine of these 55 are concerned with legal matters and relations. Some prohibitions are due to growing caste exclusiveness (No. 5, 10, 31, 40, 43). Others again spring from ideas of greater insistence on the sacredness of the marriage tie, a stricter morality and a demand for greater decency and purity, particularly in women (No. 2, 3, 4, 9, 15, 23, 24, 33, 39, 55). A few are based on notions of compassion, justice and equity (No. 1, 8, 24, 25, 42). Some owe their origin to the growing sacredness of the brāhmana's person and his high social position (No. 7, 10, 27, 29, 30). Some must have been suggested by hygienic considerations (No. 12, 16, 28, 38, 41, 45), some arose from strict ideas of sin, expiation and ceremonial purity and impurity (No. 13, 18-21, 28, 44). Two of these, when they

1883. यो ब्राह्मणोऽप्यसुरीह कश्चिन्मोहात्सुरं पादयति सन्दुहद्धिः । अपेतर्मा ब्रह्महा चैव स स्वादुर्मैत्र्योके वाहिकः स्वापरे च । आद्विपर्व 76. 67 = ब्रह्मवपुराण 25. 62.

1884. यद्वा वामागमादौ वैष्णविकपुरस्कारेणोक्तं देवमेवेत्यादौ मद्यविधानं तद्विदुः निषिध्यते । अथवा विष्णवकशास्त्री मूलजावशास्त्री च — तुभ्यं (तुभ्यं ?) चित्रं सुमन्त्रं च सुरं च विविधमपि । तथा-सुरापोलिकमोसायैर्वैष्णवैर्मोचयाद्विभिः इत्येवाम्बां वगर्थं यतः तत्र यदापि-मद्यमेतत्सुराद्विभिः ब्राह्मणं (ब्राह्मणो ?) निनिवर्जयेद्विचनेन ब्राह्मणानो निषिद्धं तदापि अविष्णवद्विपुस्कारेणापि कलौ निषिध्यत इति । कलिकापर्वि, (folio 5a), कुम्भमहा p. 1291 gives a summary of this.

prohibit the stage of forest hermit and of *sannyāsa*, strike at the very root of the ancient scheme of *śramas*.

The chapter on *Kaliyariyas* can be employed as a very effective answer to those who trot out the theory of the 'unchanging East'. Social ideas and practices undergo substantial changes even in the most static societies. Many of the practices, that had the authority of the Veda (which was supposed to be self-existent and eternal) and of such ancient *śruti*s as those of *Āp.*, *Manu* and *Yaj.*, had either come to be given up or had become obnoxious to popular sentiment. This fiction of great men meeting together and laying down conventions for the Kali age was the method that was hit upon to admit changes in religious practices and ideas of morality. The *Kaliyariya* texts are also a complete answer to those who held fast to the notion that *dharma* (particularly *ācārādharma*) is immutable and unchangeable (*aparivartaniya*). This chapter on *Kaliyariya* unmistakably shows how the most authoritative dicta of the Veda and of ancient sages and law-givers were set aside and held to be of no binding authority because they ran counter to prevailing notions and furnishes a powerful weapon in the hands of those who want to introduce reforms in the incidents of marriage, inheritance and other matters touching modern Hindu society. One can further see how some practices still persist in spite of the prohibitions in the *Kaliyariya* texts viz. marriage with one's maternal uncle's daughter, *sannyāsa*, *agnihotra* and even *śrāuta* animal sacrifices (rarely).

Some works add two more to the *Kaliyariya* verses which mean, 'imprecations, omens, dreams, palmistry, listening for supernatural voices or messages, promises to make presents to a deity if a certain prayer were granted, prophetic replies by astrologers to questions, may rarely turn out to be true. One should not, however, resort to these through the desire to secure results from them. Similarly there are other actions also (that have to be abandoned) in the Kali age, because they have come to be included (by people) under improper acts (*adharma*).'¹⁸⁸⁵

1885. अथ शपथाः काशीस्थलोलाकेतीर्थस्नानाद्ययः । शकुनाः पूर्णकुम्भादयः । स्वपाः पुष्पं कुम्भं कुम्भान्वृत्ते पश्यति न पुन इन्तीत्यादिवातिसुतिस्त्रिधाः । उपकुलिः सन्ध्यायां निर्जे-
नकादिपुष्टं अथपुष्टपूर्वकं स्वेष्टादिस्वकृतवस्त्रशब्दाकर्णनम् । उपपाचितमसिम्हं कार्यं
सिद्धे भेरवाय सौतेलं कुसराय वास्यामीत्यादिसङ्ख्ययः । आदेशः यन्मन्त्रेण ज्योतिर्विद्म-
विष्णुकथनम् । पलाशविस्तरपापीवादेः मलिनम्पलाशुद्वयमाभावात् स्यादलान्निपमाभावात्
शकुनादिनाममात्रेण जवायुदेशकविक्रयादिनृत्तिरचितेति दृष्टावकावनिषेध एव कियते

(Continued on the next page)

From the fact that no ancient *smṛti* speaks of Kalivarjya, that the ancient commentaries of Viṅvarjya, Medhātithi and even Viṅṇāśvara do not cite long lists of Kalivarjyas, that such lists first make their appearance in the *Smṛtyarthasāra*, the *Sm. C.* and Hemādri (works and authors of 12th and 13th centuries), the most probable inference is that these lists of Kalivarjyas were first put together at the earliest in the 10th or 11th century A. D. ¹⁸⁸⁶

(Continued from the last page)

न त्वुदाहरणं दान्तायकः । स्मृतिकौ. p. 477. The passage 'युक्तं कुण्डे ... इति' is quoted by *अनुशासने* on वेदान्तसूत्र III. 2.4. The *कलिवर्जपत्रि* (folio 11b) explains 'अकुनाः काकपौतादिचैद्यापिशेषाः । ... उपश्रुतिश्चैलपनादिपुष्टपार्थं रिक्ता विनिर्वाय-
सूचनशब्दाकर्णनम् । ... आदेशः आशीर्वादः मन्त्रश्लोकं भविष्यकथने वा ... एते च निषेधा इति वातिकानुसारिणः । निषण्णानुसारिणस्तु (निषण्णानु- ?) धर्मविज्ञापनेरेते पशुदामा एवेति मन्त्रे ।' वातिक means here the तन्त्रवातिक of कुमारिल and निषण्ण refers to the work of Prabhākara, who was called निषण्णकार by the *शास्त्रदीपिका* on जै. II. 1. 1.

1886. An attempt at a systematical collection of the Kalivarjya texts and elucidation thereof was made by me in a paper submitted to the 8th All India Oriental Conference held at Mysore in December 1933. The paper was published in the Journal of the Bombay Branch of the Royal Asiatic Society, vol. 12, pp. 1-18 (New Series), 1936. Recently (1943) Mr. Bhatknaath Bhattacharya has published a book which contains a full treatment of Kalivarjyas. He states in the preface that it is 'an exact reprint of the thesis for Jogendrachandra Ghose Research Prize in Comparative Indian Law for 1933', that the subject is 'comparatively fresh and unexplored' and that the treatment is on lines marked out by the writer himself. He claims that his work is 'original as a whole except one section on secondary sons'. He does not state exactly in what year the thesis for a prize of 1933 was submitted to the Calcutta University. Presumably a thesis for a prize of 1933 should have been submitted in 1934 or 1935 at the latest. No satisfactory explanation is given why the thesis was published in 1943, so long after the year of the prize, nor does he mention my paper published so far back as 1936. It appears from quotations in the book as printed that it was probably retouched, if not actually written, after 1937. For example, on p. 76 he quotes a passage from the *Smṛtimuktāphala* (section on Varṇadama p. 201), which was published by Principal J. R. Gharpure only in 1937 in Devanāgarī. If the original thesis was written or revised in or after 1937 my paper published in 1936 should have been mentioned. Mr. Bhatknaath Bhattacharya in his paper 'the sources of dharma and their comparative authority' published in the Proceedings of the 10th Oriental Conference at Tirupati held in 1940 refers to my paper on Kalivarjyas (p. 160) as 'brief and compact'. This shows that he knew my paper years before he published his work in 1943. The claim of the subject being 'unexplored' and the thesis being 'original' is hardly admissible.

CHAPTER XXXV

CUSTOMS IN MODERN INDIAN LAW

Though an elaborate treatment of customs in modern Anglo-Indian Law is far beyond the scope of the present work, yet a few words on customs in modern times may not be altogether out of place here. When the British began to acquire political domination in India they realized the importance attached to customs by all persons in India and the Charter of the Mayor's court at Bombay in 1753, unconsciously following the ancient dicta of Manu (VII. 203) and Yaj. (I. 343), contains the earliest trace in British royal charters of a reservation to the peoples of India of their laws and customs.¹⁸⁸⁷ The British Parliament and the Indian Legislatures have allowed customs to occupy a very high place in the administration of law and justice. The preamble to 21 Geo. III chap. 70 (1781 A. D.) recited that one of the purposes for which the Act was passed was that the inhabitants of Bengal, Bihar and Orissa should be maintained and protected in the enjoyment of all their laws, *usages*, rights and privileges and sec. 17 of that Act provided among other things that, in the case of the inhabitants of Calcutta, their inheritance and succession to lands, rents and goods and all matters of contract and dealing between party and party shall be determined in the case of Mahomedans by the laws and usages of Mahomedans and in the case of Gentus by the laws and usages of Gentus¹⁸⁸⁸ and, where only one of the parties shall be a Mahomedan or Gentu, by the laws and usages of the defendant. 37 Geo. III chap. 142 (1796 A. D.), sec. 13, Bombay Regulation IV of 1827, sec. 26, the Government of India Act of 1915 (5 and 6 Geo. V chap. 61, sec. 112), Government of India Act 1935 (25 Geo. V chap. 2, sec. 223), the

1887. Vide *Lopes v. Lopes* 5 Bom. H. C. R. (O. C. J.) 172, 183.

1888. The word 'Gentu' (or Gentoo) was the Portuguese word for 'Gentile' and appears to mean a pagan inhabitant of Hindustan who is not a Mahomedan. Its use in a judicial document first occurs in the judgment of Lord Chief Justice Willes in *Omichand v. Barker* (Durnford's Reports of cases, 1737-1769, p. 338). Vide on the word Gentoo ' Khojas and Memons case ' in Perry's Oriental cases 110, 123 and *Lopes v. Lopes* 5 Bom. H. C. R. (O. C. J.) 172, 185-186.

Madras Civil Courts Act (III of 1873, sec. 16), the Bengal, North-west Provinces and Assam Civil Courts Act (XII of 1887 sec. 37), Central Provinces Laws Act (XX of 1875, sec. 5), the Oudh Laws Act (XVIII of 1876, sec. 3), the Bengal Laws Act (XVI of 1872, sec. 5) enact that the custom of the parties or of the defendant shall be the rule of decision in matters of succession and inheritance, marriage, caste, religious institutions and the like.

The burden of proving a custom opposed to the general law or in derogation of the ordinary rights of another lies heavily on the person alleging it.¹⁸⁸⁹ The decided cases lay down several essentials of a valid custom. In order to make a particular custom valid it must be proved to be immemorial or ancient, uniform, certain, reasonable, obligatory and it must not be immoral or opposed to public policy or to any express enactment of the Legislature. What antiquity must be proved before a custom can be accepted as valid depends upon the circumstances of each case.¹⁸⁹⁰ When it is said that a custom must be ancient it is not meant that the antiquity must be carried back to a period beyond the memory of man. According to the Mit. on Yāj. II. 27 *smṛta-kāla* (time within living memory) in relation to possession means a period of one hundred years, while according to Katyāyana and Vyāsa it is only a period of sixty years.¹⁸⁹¹ On evidence of the prevalence of a custom even for 20, 30, 80 or 90 years the Courts have held that a presumption may arise that the custom is ancient and that if the presumption is not rebutted the Court may accept it as a valid and ancient custom.¹⁸⁹² Many instances have generally to be adduced for proof of a custom. No hard and fast rule can be laid down about the number of instances required to prove a

1889. *Neelkisto Deb v. Beer Chunder* 12 Moo. I. A. 521, 542; *Shiba Prasadi v. Prayagkumari* 59 I. A. 331, 345; *Baba Narayan v. Sabooza* 46 Bom. L. R. 312 (P. C.), 314.

1890. *Subhani v. Nawab* 68 I. A. 1, followed in *Panchanon Roy v. Fazlur Rahman* 76 C. L. J. 479.

1891. सुव्या पेशमही भुक्तिः पैतृकी चाहि संमता । त्रिभिस्तेरविच्छिन्ना स्थिरा यद्व्या ध्विकी मता ॥ कात्या. q. by अपराज् p. 636; वसति विमर्शि भुक्ता स्वमिनात्प्राप्तस्य सती । भुक्तिः सा पौत्र्यी भूमेद्विभृता तु द्विपौत्र्यी । त्रिपौत्र्यी च त्रिभुजा न ततोभ्येय अवमता ॥ व्यास q. by स्मृतिच. II. p. 75.

1892. *Mahamaya Debi v. Haridas* 42 Cal. 455, 472; *Gururudhwaja v. Sagarandhwaja* 27 I. A. 138; *Basanti v. Beigraj* 62 I. A. 180, 193; *Darshottam v. Venichand* 45 Bom. 754, 767.

custom.¹⁸⁹² In certain cases it has been held that specific instances are not absolutely necessary, but the opinions of persons likely to know the existence of the custom is entitled to great weight, even though they may not be able to cite specific instances.^{1893a} Customs once prevalent, particularly family customs, may come to be discontinued on account of accident, *change* in popular sentiment or by the concurrent will of all the members concerned.¹⁸⁹⁴ Customs must be strictly construed and cannot be extended by analogy or parity of reasoning. Because in a particular caste marriage with a maternal uncle's daughter is allowed by custom it does not follow that marriage with a maternal aunt's or paternal aunt's daughter will necessarily be valid. Vide H. of Dh. vol. II. p. 467 notes 1895-6. The evidence about a custom should be such as to prove the uniformity and continuity of the usage, the conviction of those following it that they were acting in accordance with law and the consciousness of obligatoriness and the custom should not spring from mere habit, imitation and ignorance or mutual arrangement.¹⁸⁹⁵ A custom must not be unreasonable. A custom of excluding daughters from inheritance was held to be not unreasonable according to the ideas of the Hindu community.¹⁸⁹⁶ A custom that only members of certain castes (and not of others) were entitled to make use of a temple and to worship therein was held not unreasonable in India, though it may appear obnoxious to cultured people at the present day.¹⁸⁹⁷

Customs must not be immoral. Whether a custom is immoral is to be judged by the sense of the whole community.¹⁸⁹⁸

1892. Vide *Ratilal v. Motilal* 27 Bom. L. R. 880; *Chandika v. Muna* 29 I. A. 70.

1893a. Vide *Ahmed Khan v. Channi Bibi* 52 I. A. 372; *S. K. Wodeyar v. Ganapati* 37 Bom. L. R. 584; *Ajai Verma v. Vijai Kumari* 41 Bom. L. R. 700 (P. C.); *Madhav Rao v. Raghavendrarao* 48 Bom. L. R. 196.

1894. *Vannia Kone v. Vannichi* 51 Mad. 1 (F. B.); *Rajkishan Singh v. Ramjoy* 1 Cal. 186, 195-96.

1895. *Mathura v. Eas* 4 Bom. 345, 557; *Gopalayyan v. Raghupatayyan* 7 Mad. H. C. R. 250 (F. B.), 254; *Ram Rao v. Yeshvantrao* 10 Bom. 327.

1896. *Bhan v. Sundrabai* 11 Bom. H. C. R. 249, 277.

1897. *Anand Rao v. Shankar* 7 Bom. 323; *Sankaralinga v. Rajeshwar* 31 Mad. 236 (P. C.); *S. K. Wodeyar v. Ganapati* 37 Bom. L. R. 584; but vide *Narhari v. Bhim Rao* 39 Bom. L. R. 1225 (about a tank).

1898. *Deivanayaga v. Muthu* 44 Mad. 329, 333.

A custom which authorizes a woman of the lower castes to contract a second marriage without divorce on payment of a certain sum to the caste was held to be immoral¹⁸⁹⁹ and the Bombay High Court refused to recognise the authority of the caste to declare a marriage void or to give a woman permission to remarry without a release from the husband.¹⁹⁰⁰ The adoption of girls by dancing girls (*nauts*) has not been recognized by the Bombay High Court,¹⁹⁰¹ though the Madras High Court would recognize such an adoption if there was no intention to make it for purposes of prostitution.¹⁹⁰² Dagger marriages are practised among certain castes. The Brahmapurāṇa (chap. III, 15 and 44-46) states that among ksatriyas there are several forms of marriage such as forcibly carrying away the bride (which is the form called *rāksasa*) or marriage with the weapons (of the bridegroom). In modern times dagger or sword marriages have not been held valid by the courts even among śūdras; vide *Maharaja of Kolhapur v. Sundaram* 48 Mad. 1, *Ram Saran v. Mahabir* 61 I. A. 106.

Many customs and usages have been expressly forbidden by the Central Indian or Provincial Legislatures e. g. *Sati*¹⁹⁰³, female infanticide,¹⁹⁰⁴ slavery,¹⁹⁰⁵ marriages of children under a certain age,¹⁹⁰⁶ the dedication of women as *devadāsīs* to temples or idols.¹⁹⁰⁷ This being so, no court will allow a party to plead a custom against these positive enactments. It was recognised in a number of cases that in the Bombay Presidency¹⁹⁰⁸ a *vatandar joshi* had the right to recover by suit from

1899. *Reg v. Karsan* 2 Bom. H. C. R. 117, 125; *Uji v. Hathi* 7 Bom. H. C. R. (A. C. J.) 133.

1900. *Keshav v. Bai Gaudi* 39 Bom. 538, 543.

1901. *Mathura v. Esu* 4 Bom. 545; *Hira v. Radha* 37 Bom. 116; *Girimallappa v. Kenchava* 45 Bom. 768, 784-5; *Ghasiti Umrao v. Umrao Jan* 20 I. A. 193.

1902. *Venku v. Mahalinga* 11 Mad. 393; *Kamalakshi v. Ramasami* 19 Mad. 127; *Duggirala Veeranna v. Duggirala Sarasiratnam* 71 M. L. J. 53; *Gangamma v. Cuddappah Kuppanmai* I. L. R. (1938) Mad. 789.

1903. Vide Regulation XVII of 1829 and sec. 306 of I. P. C.

1904. Vide the Female Infanticide Prevention Act (VIII of 1870).

1905. Vide Act V of 1843 and sections 370 and 371 of I. P. C.

1906. The Child Marriage Restraint Act (XIX of 1929 as amended by Act XIX of 1938).

1907. Bombay Act X of 1934, sections 3-5.

1908. Vide *Vithal v. Anant* 11 Bom. H. C. R. 6; *Dinanath v. Sadashiva* 3 Bom. 2; *Raja v. Krishnabhat* 3 Bom. 232, *Waman v. Balaji* 14 Bom. 167.

a *yajaman* who had employed another priest to perform religious ceremonies the amount of the fees which would properly be payable to the *vatandar joshi* if he had been employed to perform such ceremonies and also the right to recover damages from a person who intrudes upon his office. But Bombay Act XI of 1926 (the Invalidation of Hindu Ceremonial Emoluments Act) now enacts (by sec. 4) that no person shall be entitled to claim as a matter of right any ceremonial emoluments from any Hindu who does not call in the services of the person claiming those emoluments. Therefore, suits of the nature described above cannot be brought now in Bombay by a *vatandar joshi*.

How customs and practices once prevalent may come to be discontinued or abrogated is well illustrated in the section on *Kalivarjya*. Some of those that have a legal bearing have been already discussed above.

APPENDIX

NOTE 191

Long lists of high functionaries and other officers occur in several inscriptions. Vide E. I. vol. VII at p. 91 (Kahla plate of Sodhadava), E. I. vol. XII at p. 40, E. I. vol. XIV at p. 327 (grant of Mahipāla). There are about 40 titles in some inscriptions. They are generally arranged in order of dignity and importance, the highest coming first. Sometimes several offices are held by the same man. For example, in the Jesar plate of Śīladitya (dated in Valabhi year 357) the high officer Mammaka is styled 'sandhivigrahādhikṛta, divirapati, mahā-pratihāra, sāmanta' (E. I. XXII at p. 120). It is not claimed that the following is a thoroughly exhaustive list. It is, however, exhaustive enough. Titles and dignitaries in South Indian languages have been generally omitted. Vogel stands for Dr. Vogel's work on 'Antiquities of Chamba State' where, on pp. 120-136, he furnishes informing notes on some officers. There is difference of opinion among scholars about the exact meaning of certain office names. The individual functions of several officers are not quite clear. The references given here as to where an office occurs are not exhaustive. Chronologically older references alone are generally given and they are mostly taken (so far as inscriptions are concerned) from the *Epigraphia Indica* (E. I.) and the *Indian Antiquary* (I. A.). Many official titles have the word 'mahā' prefixed without any change in meaning in some cases. Vide India Office Plate of Lakṣmanasena in his 27th year (E. I. XXVI p. 1 at p. 7) for many official titles beginning with 'mahā'.

अक्षपत्रिक—Vide Mahākṣapatalika below. 'Akṣapatala' means 'Account office' (Stein) or 'Record office' (Fleet). There is 'grāmākṣapatalika' mentioned in the Harṣacarita (VII, para 2). Vide Chandela plate dated *saṃvat* 1108 (E. I. XX at p. 128) and Candrāvati plate of Candradeva dated *saṃvat* 1148 (E. I. IX at p. 305). Kautliya has a section on the superintendent of 'akṣapatala' (II. 7).

अक्षपत्रिक—This is synonymous with 'akṣapatalika'. This word occurs in Gupta Ins. No. 60 p. 257 and in *Rājatarah-giṇī* V. 301, 397-398.

अक्षपटलाध्यक्ष—Superintendent of records and accounts. Vide Kautilya II. 7 and p. 143 above for his duties.

अक्षशालिक or अक्षशालिन्—Officer in charge of the gambling-hall. Vide Komanda plate of Nettiabhaṣja in E. I. XXIV p. 172 at p. 173 (about 4th century A. D.).

अक्षवाप—Superintendent of gambling. He was one of the 'rutins' mentioned in the Tal. S. and Śat Br. Vide H. of Dh. vol. II p. 1216 and above p. 112.

अद्वपति—'Market-master'. Vide Rājat. V. 167.

अधिकरणलेखक—Official recorder or scribe (who drew up deeds of sale and the like after having the land sold measured in his presence). Vide Rājat. VI. 38 and note 436 above where Visṇu Dh. S. VII. 3 is quoted.

अन्तपाल—Officer in charge of boundaries. Vide Kautilya I. 12 (one of the 18 *tirthas*), II. 21, V. 1. and Kāmandaka XII. 5. The word occurs in the Mālavikāgnimitra, Act I.

अन्तपुरमहामात्र—Officer in charge of the inner apartments or of the harem. Vide Masulipatam plate of Ammarāja II in E. I. XXIV p. 268 at p. 276.

अन्तःपुरिक—Officer in charge of the king's inner apartments or harem of the king. Vide Candrāvati plate of Candradeva of Kanoj (in *śaimot* 1148) in E. I. IX. at p. 305.

अन्तरङ्ग—A class of royal servants very intimate with the king (probably same as *ābhyaṅtara*). Vide Parikud plate of Madhyamarājadeva of Sailadanta family in E. I. XI at p. 286 and grant of Lakṣmanasena in E. I. XII p. 91 (of 1122 A. D.).

अन्तर्वेशिक—Officer in charge of the inner apartments or harem. Kautilya I. 12 mentions this officer among the 18 *tirthas*. The word occurs in the Kādambari (para 88), the Daśakumāracarita III. p. 71 and is defined by the Amarakośa.

अभितरमाणक—A messenger. The word occurs in the Nālanda plate of Devapāladeva in E. I. XVII at p. 321 (the words are 'dūtapraisāṇika-gamāgamika-abhityaramaṇaka') and in the Khalimpur plate of Dharmapāla (E. I. vol. IV p. 243 at p. 250). Vide also Chamba Ins. No. 15 p. 166 for the same and Vogel (pp. 125-126).

अमच—(Prākṛit for अमान्य). Vide Nasik Ins. Nos. 4 and 5 in E. I. VIII pp. 71, 73).

समास्य—Minister. Vide p. 104 and note 150 above.

अश्वपाल-कायस्थ—A petty officer in charge of the fodder for horses. Vide *Rājat.* III. 489.

अश्वपति—A cavalry officer. Vide Gupta Ins. No. 61 at p. 259 (in the Gupta year 106).

अक्षपटलिक—Officer in charge of the account or record office. Vide E. I. vol. I pp. 316, 318 (grant of Karna I dated *samvat* 1148).

आग्रहारिक—Officer in charge of an *agrahāra* or *agrahāras*. Vide Gupta Ins. No. 12 (Bihar stone Ins. of Skandagupta) p. 47 at p. 52 and Mallasarul plate of Vijayasena in E. I. XXIII p. 155 at p. 159. The word may also be 'agrahārīka' or 'agrahārin'. Vide E. I. XXIV at p. 127 for a note on 'agrahāra'.

आज्ञप्ति—One who communicates at the order of the king the details about a landgrant to local officers (probably the same as *dūtaka*). This word occurs in some of the earliest Ins. of Pallava Śivaskandavarman (in E. I. VI p. 84 at p. 88). Vide also E. I. VIII at p. 146 (plates of the great Pallava queen Cārudevi), JBBRAS vol. X p. 365 of *śaka* 532 (where the *ājñapti* is Durgapati), E. I. XII p. 3, E. I. XV p. 70 (plate of Sundara Cola). In the grant of the eastern Calukya king Amma II we have 'ājñaptiḥ katakādhiśo bhāṭṭadevasca lekhakaḥ' (E. I. VII at p. 188). Vide p. 184 of the same for a discussion of the meaning.

आज्ञा—a synonym of आज्ञप्ति. Vide Parle plate of Indravarman in E. I. XIV p. 360 at p. 362 (of the Ganga year 149) where the words are 'ājñā mahāmahattara-Śivavarmā'. When in the Gupta Ins. No. 25 at p. 115 (of Mahārāja Sanksobha) or in the plate of Dronasimha in the Valabhi year 183 in E. I. XVI at p. 19 the words at the end are 'svayam-ājñā' the meaning is that the king employed no *dūtaka* to convey the details of his grant to the local officers but that he gave the details in person.

आज्ञापक—Probably the same as 'ājñapti' or 'dūtaka'. Vide L. A. 14 p. 161 in the record of Vākpatirāja of Dhārā dated *samvat* 1036.

आदिबिक—Officer in charge of forest tracts. The word occurs in Kautilya I. 12 among the 18 *tirthas*.

आधिकारिक—Officer. The exact function cannot be indicated. Vide grant of Dhārāvansa in *śaka* 702 (E. I. XXIV p. 176).

at p. 184), Cambay plates of Govinda IV in *śaka* 852 (E. I. VII p. 26 at p. 40), Kantheri plate of Vikramāditya V in *śaka* 930 (I. A. 16 p. 15 at p. 24).

आम्यन्तर—Officers specially intimate or in close contact with the king. Vide *Rājat*, VIII. 426.

आयुक्त—An officer. The exact duties are not clear. Pāṇini II. 3. 40 indicates that he knows the word in the sense of a servant or officer. Vide Gupta Ins. No. 1 p. 1 at p. 8 (Allahabad Stone pillar Ins. of Samudragupta) which has 'āyukta-purusa'.

आयुक्त—Same as आयुक्त. The word occurs in Kāmasūtra V. 5. 5 and Kāmandaka V. 82 (q. in note 73 above). Vide Omgudu grant of Vijayaskandavarman (E. I. XI at p. 250), Paharpur plate (E. I. XX p. 59 at p. 61 in Gupta year 159), plate of Dronasimha in Valabhi year 183 (E. I. XI p. 17), grant of Dharaśena II in Valabhi year 252 (in I. A. vol. 15 p. 187), the Maṭraka plate in Gupta year 252 (E. I. XI p. 83).

आयुपुत्र—(Prakrit अयुपुत्र)—occurs in Brahmagiri Rock Inscription of Aśoka (in Corpus I. I. vol. I p. 175).

आचार्य—lit. guardian of quarters. Acc. to Sukra I. 192 he is a chief ruling over 10000 villages.

उपयुक्त—A subordinate officer. Kautilya II. 5 has that word. The duties cannot be specified.

उपयुक्त—Probably the same as 'upayukta'. The word occurs in Karhad plates of Kṛṣṇa III dated *śaka* 880 (E. I. IV p. 278, at p. 285), the Cambay plates of Govinda IV in *śaka* 852 (in E. I. VII p. 26 at p. 40).

उपरिक—A very high officer, somewhat like a Governor of a province. Vide Damodarpur plate of Kumāragupta I in the Gupta year 125 (i. e. 443-44 A. D.) where an *uparika* is said to have been selected by Emperor Kumāragupta to govern Puṇḍravardhanabhukti and where the *uparika* is said to have appointed the *kumārāmātya* Vetravarman to govern the district (*visaya*) of Kotivarṣa (E. I. XV p. 130). He is sometimes styled *mahārāja* and *rājaputra*. Vide also Gupta Inscriptions pp. 213, 216, the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306), the Banskhera plate of Harsa (E. I. IV p. 208 at p. 211) where *uparika* occurs after ' *kumārāmātya* ' and before ' *visayapati* '. Viśvarūpa on Yāj. I. 307 quotes a prose passage from

Brhaspati where the qualities requisite in an *uparika* are set out. Vide Dr. R. G. Bhandarkar *Festschrift* pp. 231-233 for note and Vogel p. 123.

एकद्व—The exact meaning is not certain: probably an officer belonging to a body organized in military fashion for collecting revenue or performing police duties. The word occurs in *Rājat* V. 249, VII 1604.

कटकेश or कटकराज or कटकाधीश—Superintendent of the royal camp. Vide E. I. VII at p. 185 (grant of Amma II who ruled from 945 to 970 A. D.).

कटुक—Exact function not known. The word occurs in two Tale-svara plates in E. I. XIII at p. 117. Vide महाकटुक below.

कम्पनाधिपति or कम्पनापति or कम्पनेश—Commander-in-chief. Vide *Rājat* V. 447, VII 1362 and 1366.

कम्पनोद्ग्राहक—An officer connected with the army. Vide *Rājat* VIII 1430.

करण—A clerk. The word occurs in the Irda plate of Kamboja king Narapāladeva in E. I. XXII p. 150 at p. 155 (about 10th century A. D.).

करण-कायस्थ—A scribe of legal documents. Occurs in Chamba Ins. No. 25 p. 187 at p. 194. Vide Vogel p. 133.

करणिक—Officer in charge of a State department or office. The word occurs in the Nālandā stone Ins. of Yaśovarmadeva's reign about 530 A. D. in E. I. XX p. 37 at p. 44, in the Chatsu Ins. of Guhilot Balāditya of about the 10th century in E. I. XII p. 10 at p. 17, in a grant dated *samvat* 1203 of Govindacandra's son in E. I. VIII p. 158 (where we have 'karāṇika-ṭhakkura-śrīvivika), in E. I. XX Appendix p. 52 No. 350 of *samvat* 1228 (about the donation of a karāṇika-brāhmaṇa-Chāhāda).

करणिन्—Same as 'karāṇika'. The word occurs in the Harsacarita VII para 2 (*sakala-karaṇi-parikaraḥ*).

कर्मसचिव—Executive minister. The word occurs in Rudradāman's Junagadh Ins. of 150 A. D. in E. I. vol. VIII p. 36. Vide p. 105 above.

कायस्थ—A scribe or writer in the revenue department of the king. The oldest references are probably those in Yaj. I 322, Viṣṇu Dh. S. VII 3 and Br. Saṁ. 86. 12. Vide Aśvagha-

kāyastha above and grāmakāyastha in Rajat. V. 175 and Indian Historical Quarterly, vol. IX p. 12 (a grant of Gupta year 120 i. e. 439-40 A. D.). Vide H. of Dh. vol. II. pp. 75-77 for a note on Kāyastha.

कार्मान्तिक—Superintendent of all mines and State manufactories. Kautilya I. 12 mentions him among the 18 *śrīthas*. Kautilya II. 12 is headed 'ākara-karmāntaprayartanam' i. e. 'conducting mining operations and manufactories'.

कुमार—A prince younger than a Yuvarāja (the heir apparent). The word 'Kumāla' occurs in the first separate Rock Edict of Aśoka at Dhauī (Corpus I. I vol. I pp. 93, 97). Vide also Corpus I. I. vol. II pp. 40 and 48 (Mathurā Lion Pillar capital).

कुमारमहेश्वर—A high officer below a provincial Governor. Vide 'uparika' above. In the Allahabad *prastāva* of Samudragupta, Hariṣena is described as *kumārāmātya* and also *sāndhivagrāhika* and *mahādandanāyaka* (Gupta Ins. No. 1 at p. 16). Vide Gupta Ins. No. 46 p. 213 at p. 216, the Banskhera plate of Harsa (E. I. IV p. 208 at p. 211), E. I. X at p. 72 in the reign of Kumāragupta in Gupta year 117 (a brāhmana is described as *mantrin*, *kumārāmātya* and *mahābalādhikṛta*). Vide Dr. U. N. Ghoshal's paper on 'kumārāmātya' in the proceedings of the 6th All India Oriental Conference pp. 211 ff., p. 117 above and Vogel p. 123.

कुलकरणि—a hereditary clerk or officer. The word occurs in the Sūti Ins. of Śaka 981 in E. I. XV p. 85 at p. 91.

कुलिक—An officer in charge of ten villages who was granted a 'kula' of land for his salary. Vide Manu VII. 119 and Kullāka thereon. In the Damodarpur plate of Gupta year 124 it is said that the head of the district was assisted by the *naṅara-śreṣṭhin*, *prathama-kulika* and *prathama-kāyastha* (E. I. XV at p. 130). In the Nālandā plate of Devapāladeva we read 'Oḍra-mālava-khaśa-kulika-karnāṭa-hūpa-cāta-bha-tasevakādīn' (E. I. XVII at p. 321). Vide Chamba Ins. No. 15 at p. 166. Vogel says that 'Kulika' is a tribe (pp. 126-127). Probably the passage means 'officers in Orissa, Khaśa and Mālvā and the cātas and soldiers of Karnāṭa and Hūpa origin'. Kulika also means 'an arbitrator as a tribunal'. Vide pp. 280-282 above and Indian Historical Quarterly, vol. 19 p. 12 at p. 14. Vide महापादकुलिक.

कोटपाल—Officer in charge of a fort. The word occurs in the Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306) and in the Nālandā plate of Devapāladeva in E. I. XVII at p. 321 where the word is read as *koṭapāla*.

सत्त—Chamberlain. Vide p. 111 above. He is one of the '*ratnas*'. According to Manu X. 16 and Yaj. I. 94 the offspring of a kṣatriya woman from a śūdra male was called *kṣattr* and it is probable that such mixed offspring were employed as door-keepers or chamberlains.

सत्रप—A provincial chief. The word occurs in Corpus I. I. vol. II p. XXXIV and pp. 23, 28 (Taxila plate of Patika of the year 78) and in the plate of Vidagdha in 'Antiquities of Chamba', Ins. No. 15 p. 164 at p. 166. Vogel says it must be read as '*kṣetrapa*'. Vide '*mahāksatrapa*' below. The word is probably a Sanskritized form of Persian '*satrap*'.

सेत्रप—The word occurs in the Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at 306).

सेत्रपाल—Occurs in the Nālandā plate of Devapāladeva (E. I. XVII at p. 321).

खण्डरक्ष—The word occurs in the Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306), in the Nālandā plate of Devapāladeva (E. I. XVII at p. 321) and in the Chamba Inscription Nos. 15 and 26. In 'Antiquities of Chamba' Ins. No. 25 the form is '*khadgaraksa*'. Vide Vogel pp. 127-128.

खण्डपाल—Occurs in the Kahla plate of Sodhadeva of *śrinva* 1134 (E. I. VII p. 85 at p. 91). The form *खण्डपाल* occurs in the Panchobh plate of संयासगुप्त (JBORS. vol. V p. 582 at p. 588).

खोल—Occurs in the Khalimpur plate of Dharmapāladeva (E. I. vol. IV p. 243 at p. 250). The meaning is uncertain.

गजपति—Officer in charge of the elephant arm in an army. The word occurs in the plate of Jayacandra of Kanoj dated *śaka* 1225 in I. A. vol. 15 at p. 7.

गजपति—Occurs in the Talesvara plate (6th to 8th centuries A. D.) in E. I. XIII p. 109 at 115. उदाल on इहसंहिता 52, 13 says '*कोशामयने गजः*'.

गजवर—(a Persian word for '*treasurer*')—occurs in the Ins. of Mahāksatrapa Śodāsa found at Mathurā (in E. I. IX p. 247). Vide Rājat. V. 177.

गमागमिक—The meaning is uncertain. It probably means some kind of messenger. It occurs in Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306), the Nālanda plate of Devapāladeva (E. I. XVII at p. 321), the Rajor Ins. of Mathanadeva in *śvimal* 1016 (in E. I. vol. III p. 263 at p. 266). डटल on बृहत्संहिता 85. 34 explains दूत as गमागमिक. In the Khalimpur plate (E. I. vol. IV pp. 243, 250) the words दूतबोलेगमागमिकाभित्वमात्र occur one after another.

गामुक—Same as *grāmakūta* below. Vide Ins. from Hottur in E. I. XVI p. 74 (of śake 929).

गामुक—Same as above. It occurs in the Ratta Ins. from Saundatti of śake 902 (in JBBRAS. vol. X at p. 208).

गुल्मपति—Officer in charge of a गुल्म, for which see p. 205 above. It occurs in the Panchobb plate of Sangrāmāgupta (12th century) in JBORS. vol. V p. 582 at p. 588.

गुह्यसूत्र—Secret service men. Vide Irda plate of Kamboja king Narapāladeva in E. I. XXII p. 150 at p. 156 (about 10th century).

गोप—Officer over five or ten villages. Vide Kauṭ. II. 35 and p. 143 above.

गौलमिक—'Superintendent of woods and forests' (Fleet). The word occurs in Gupta Ins. No. 12 p. 47 at p. 50, in the Nālanda plate of Devapāla (E. I. XVII at p. 321), Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306), in the grant of Lakṣmanasena (E. I. XII p. 6 at p. 9). The word is formed from 'gulma' acc. to Vārtika 13. (āyasthanebhyasthaka) on Pāṇini IV. 2. 104. Vogel (p. 127) boldly asserts that 'the words saulkika and gaulmika are unknown in Sanskrit Literature' in spite of Bühler's note in E. I. vol. I p. 2 at p. 7 that saulkikas are frequently mentioned in inscriptions. But saulkika also occurs in Yāj. II. 173 and both words occur in the Mahābhāṣya. Gulma means a post of guards. Vide p. 141 above. The word 'gaulmika' read in the grant of Pallava Siyaśakandavarman (E. I. vol. I p. 2 at p. 5) is correctly held by Bühler to stand for 'gaulmika'.

ग्रामकायस्थ—Village scribe. Occurs in Rājat. V. 175.

ग्रामकूट—Village headman. Vide p. 154 for reference from Paithinasi. Kauṭ. IV. 4 has that word and the com. on Kāmasūtra V. 5. 5 explains 'halotthavṛtti' as 'grāmakūta'. Vide also Karhad plates of Kṛṣṇa III dated śake 880 (E. I.

IV p. 278 at p. 285), the Sanjan plates of Buddha-varasa (E. I. XIV p. 144 at p. 150), the grant of Karka Suvarṇavarasa in śaka 746 (E. I. XXIV p. 77 at p. 84), Cambay plates of Govinda IV in śaka 852 (E. I. VII pp. 26, 39).

ग्रामकूटक—Same as above. This form occurs in Kautheri plate of Vikramāditya V dated śaka 930 (I. A. vol. 16 p. 15 at p. 24).

ग्रामणी—Village headman. Vide pp. 153-154 above for ancient references. Pāṇini V, 2. 78 has this word.

ग्रामनेतृ—Same as above. Occurs in Śukra II. 120.

ग्रामपति—Occurs in the Mit. on Yāj. II. 271.

ग्राममर्तु—Occurs in Yāj. II. 271.

ग्रामाधिपति—Vide Kāmasūtra V. 5. 5.

ग्रामिक—Village headman. Occurs in Manu VII. 116, Kaut. III. 10 and in Bhūmāra stone Pillar Ins. of Hastin and Śarvanātha in Gupta year 189 (Gupta Inscription No. 24 p. 112).

घटपति—Officer in charge of quays or landing places (*ghats*). Occurs in Kahla plate of Sodhadeva in *samvat* 1134 (E. I. VII. p. 85 at p. 91). For घटपाल vide JBORS vol. V pp. 582, 588.

चाट—This word has given rise to various opinions. Fleet and Bühler translate as 'irregular soldiers'. Vogel (pp. 130-132) points out that Chamba is the only place where the ancient word 'cāṭa' is still extant in the modern form 'chat' meaning 'head of a *pargana*'. Grants of villages are often expressed as 'acāṭabhaṭapraṇeśya' (not to be entered by cāṭas and bhaṭas). For example, in the Surat plate of Maṭraka Vyāghrasena (E. I. XI at p. 221) it is stated that the granted land was not to be entered by cāṭas and bhaṭas except for (seizing) robbers and those guilty of harm or treason to the king. Similar words occur in the Betul plates of Saṅkṣobha in Gupta year 199 (acāṭabhaṭapraṇeśyam coradrohakavarjam) in E. I. VIII p. 287. The words occur also in the Khoh plate of Mahārāja Hastin in Gupta year 191 (Gupta Ins. No. 23 p. 106). Yāj. I. 336 states that it is the duty of the king to protect people from the harassment caused by cāṭas, robbers and kāyasthas and the Mit. explains 'cāṭa' as persons who deprive people of their wealth after producing false confidence in them. Three quarters of the same verse occur in the Pañcatantra I p. 72 verse 343. Aparārka (p. 792) quotes Bṛhaspati that 'dangers common to all are those arising from cāṭas and thieves'.

Prof. Pathak while editing the Abhona plates of Śāṅkara-gaṇa dated in Kalacuri *saṁvat* 347 in E. I. IX p. 296 quotes the words of Śāṅkarācārya (*tārkika-cāta-bhāṭarājāpraveśyam*) in his Bhāṣya on Br. Up. and Ānandagiri's explanation thereon viz. *cātas* are those that transgress the rules of conduct for decent people and *bhātas* are servants telling falsehoods. Vide the Valabhi grant of Dharaśena II in 252 Gupta year (I. A. 15 p. 187) and the Palitana plates of the same king and of the same year in E. I. XI. p. 80 at p. 83 and the Banskhera plate of Harṣa (E. I. IV p. 208, at p. 211 where we read '*bhāṭacāta-sevakādin*') for other early occurrences of the word. In the Naihati grant of Ballāla-sena we have the words '*cattabhāṭa-jātiyān janapadan*' (E. I. XIV p. 156 at p. 160).

✕ चोरप्राह—Thief-catcher. The word occurs in Nārada (*pariśista* verse 18) and in Kāt. q. by Aparārka p. 844.

✕ चोररज्जुक—Probably an officer whose duty it was to secure robbers with ropes. Kaut. IV. 13 mentions this officer and II. 6 refers to '*corarajjū*' as one constituent of '*rāṣṭra*'.

✕ चोररोदरगिक—Thief-catcher or one who exterminates thieves. This word occurs in Gupta Ins. No. 46 p. 213 at p. 216, the Valabhi grant of Dharaśena II in Gupta year 252 (I. A. 15 p. 187) and the Palitana plate of the same king in the same year (E. I. XI p. 80 at p. 83), the Rāṣṭrakūṭa grant of śaka 697 (JBBRAS vol. 16 p. 105 at p. 108), Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306), the grant of Lakṣmaṇasena (E. I. XI p. 6 at p. 9).

✕ चोररोदरु—Same as above. The word occurs in Yāj. II. 271 and in Kātyāyana quoted by Aparārka p. 844.

छत्रछादिक—Umbrella bearer. This word occurs in '*Antiquities of Chamba*', Ins. No. 15 at p. 166. Vide Vogel p. 138.

उक्कट—It appears to have been a mere title and not an office whereby the holder was entitled to wield some kind of power in the State. The word occurs in *saṁvat* 1005 (E. I. XIX p. 243), in the plate of Govīṇḍacandra in *saṁvat* 1186 (in E. I. XIII p. 295 at p. 297), the Sevadi plate of Cāhamāna Ratnapāla in *saṁvat* 1176 (E. I. XI p. 304 at p. 310). It occurs as a title in Rājat. VII. 290, 706, 738.

तन्त्रपति—A Judge (*dharmaśādhikārin*). Occurs in Rājat. VIII. 2422.

✕ **तन्त्रपाल**—Seems to mean some officer like "Charged" affairs". The word occurs in a record at Sādi in Ron Taluka of Cālukya Somesvara I in śaka 973 (E. I. V at p. 77) and in Partabgarh Ins. of Pratihāra king Mahendrapāla in *samvat* 1003 (in E. I. XIV p. 176 at p. 185), one Mādhava being styled 'tantrapāla-mahāsāmanta-mahādandanāyaka'.

✕ **तरपति**—Superintendent of all ferries. Vide Nālanda plate of Devapāla (E. I. XVII at p. 321) and Kahla plate of Sodhadeva in *samvat* 1134 (E. I. VII at p. 91). In the Nālanda plate 'tarika' and 'tarapatika' come immediately after one another and must be distinguished as to meaning.

तरिक—Probably means 'one who plies a ferry boat'. Occurs in Nālanda plate of Devapāla (E. I. XVII at p. 321), Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306).

✓ **तलार** or **तल्लर**—Meaning uncertain. The word occurs in the Ins. of Samarasimha of Mewar in *samvat* 1330 (E. I. vol. XX. Appendix No. 579 p. 82). In Punjab a subdivision of high class *khatris* is called Tālwar.

तलावाटक—Meaning not apparent. Bhagavanlal suggested that it is the same as modern 'Talāti' (petty revenue officer). It occurs in the Deo-Baranark Ins. of Jivitagupta (Gupta Ins. No. 46 p. 213 at p. 216).

✓ ✕ **दण्डनाथ**—Commander of an army. In E. I. vol. V. p. 28 at p. 31 mention is made of a Dandanātha Sahadeva under the Yādava king Jaitugi or Jaitapāla (about 1200 A. D.).

✕ **दण्डनायक**—Various meanings are assigned by several scholars. Stein on Rājat. VII. 951 takes it to mean 'prefect of police'. In many cases it appears to mean a 'General or Magistrate'. In E. I. VII, Appendix No. 291, 292 and 296 Ins. of the years 1178 to 1181 A. D. there is one Kesimayya styled 'dandanāyaka' lower in rank than mahāmaudaleśvara. Vide also Ins. of Jayakeśi Kadamba of 1125 A. D. in E. I. XIII p. 298 and p. 317 (Dandanāyaka Lakkharasa), JBRRAS XII p. 11 in śaka 1145 (Dandanāyaka Purusottama of Yādava Singhapā), the Abhir Ins. in E. I. V p. 234 where one Mahadevarasa is styled mahāsāmantaādhipati and dandanāyaka and his subordinate Māyideva is also called 'dandanāyaka' (about 1153 A. D.), in several Kalacurya Inscriptions (E. I. V p. 24 at p. 28, E. I. V. p. 213 at p. 215). Lakanna and Mādanna were dandanāyakas of Devarāya II of Vijayanagara (about 1388 śaka) in E. I. XV at p. 15. Vide p. 115 and n. 152 above. E. I. XIX p. 265 at p. 269 (grant of

Dharmarāja) reads 'dāḍaṇṣyaka'. In Br. Sam. 72.4 the queen, yuvarāja, senāpati and dāḍaṇṣyaka are placed on the same level in the matter of the staff (danda) to be prepared for them.

✓ **दण्डपति**—Commander of forces or a governor. Vide Abu Vimala temple Ins. dated *saṃvat* 1378 in E. I. IX pp. 148, 156.

✓ **दण्डपाल**—An officer in charge of all branches of the army. Vide Kaut. I. 12 and p. 112 n. 147 above.

✓ **दण्डपाशिक**—Officer in charge of punishment i. e. criminal justice. The word occurs in the Palitana plates of Dharasena II dated in Gupta year 252 (E. I. XI p. 83), in the Valabhi grant of the same king in the same year (I. A. 15 p. 187), in the Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306 which reads 'dāḍapāsika') and Lakṣmaṇasena's grant (E. I. XII at p. 9), also in Yaśastilaka I p. 50.

✓ **दण्डवासिक**—(a prakṛit form of dāḍapāsika). Occurs in Chamba Ins. No. 15 at p. 166. Vide Vogel p. 129.

✓ **दण्डशक्ति**—Meaning uncertain. The word occurs in Khalimpur plate of Dharmapāla in E. I. vol. IV p. 243 at p. 250.

✓ **दण्डाधिनाथ**—Same as dāḍapāla. The word occurs in the Chittur plates of Kullottunga Coḍadeva (I. A. 14 p. 55 in *śake* 1056).

✓ **दण्डाधिप**—Same as above. The word occurs in a quotation in the com. on Yaśastilaka I p. 91 and the Abu Vimala temple Ins. dated *saṃvat* 1378 in E. I. IX p. 148 at p. 151. Vide note 148 above for quotation.

✓ **दण्डिक**—Same as 'dāḍavāsika'. Vide Chamba Ins. No. 15 at p. 166.

✓ **दण्डेश**—Same as दण्डनाथ. In J. B. B. R. A. S. vol. 15 p. 386 (of *śake* 1160) there is a commander (dāḍeśa) Bicirāya under Yādava king Singhapa.

✓ **दण्डपाशिक**—Same as 'dāḍapāsika'. This word occurs in the Pañcatantra II, *Kathā* 4 (as dāḍapāsika meaning a watchman), in the grant of Mahābhavagupta I (E. I. XI at p. 94), in the Nālandā plate of Devapāla (E. I. XVII at p. 321), in E. I. XIX p. 265 at p. 269. Vide Vogel p. 129.

✓ **दण्डभोगिक**—Probably the same as दण्डपाशिक. The word occurs in the Wala plate of Guhasena in Valabhi year 246 (E. I. XIII at p. 339).

✓ **राष्ट्रिक**—A police officer. The word occurs in the Gupta Ins. No. 46 p. 213 at p. 216, in the Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306), in the Nālandā plate of Devapāla

(E. I. XVII at p. 321). In this last 'dāṇḍika' and 'dāṇḍapāsika' come immediately after one another.

✕ दाणक—Appears to be the same as 'dūtaka'. The word occurs in the grant of Paramāra king Siyakadeva dated *samvat* 1026 (in E. I. XIX p. 177) and in E. I. XIX at p. 243 (dated *samvat* 1005).

✕ दाशपरधिक—meaning doubtful. Probably an officer whose concern was with the ten *aparādhas* of which the king could take cognisance *suo motu*. The word occurs in the Nālanda plate of Devapāla (E. I. XVII at p. 321) and in the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 p. 304 at p. 306). Vide p. 264 above for the ten *aparādhas*.

दिवपाल—Probably officers in charge of the borders of a kingdom. The word occurs in Nārada (Dr. Jolly's edition, parīṣista-verse 17) q. by the Mit. on Yāj. II 271 and Kat. (813) q. by Aparārka p. 844.

दिविर—A clerk. The Rājat. VIII. 131 makes it clear that 'divira' was distinct from the 'kāyastha'. The word occurs in the Gupta Ins. No. 27 at p. 122 of Mahārāja Jayanātha in Gupta year 177 (where one of the donees is a *divira* Sarvavādha).

दिवीरपति (or दिविरपति)—chief of clerks. In the grant of Śilāditya of the Gupta year 286 a certain officer is styled 'sāṇdhivigrahādhikṛta-divirapati' (E. I. XI p. 174 at p. 180); vide also Jesar plate of Śilāditya in 357 Valabhi year (E. I. XXII p. 114 at p. 117) where a person called Mammaka is styled 'divirapati' and also *sāṇdhivigrahika-mahāpratihāra* and *sāmanta*.

दुःसाधसाधनिक—Vide दुःसाधसाधनिक below.

✕ दुर्गपाल—Superintendent of a fort. Vide p. 112 note 147 above.

✕ दुष्टसाधक—meaning uncertain. The word occurs in the Kahla plate of Sodhadeva of *samvat* 1134 (E. I. VII at p. 91).

दूत—Messenger, envoy. Vide Viṣṇudharmottara II. 24. 13-14, 28 for his qualifications and pp. 112, 127 above. In the 13th Rock Edit of Aśoka at Shahabnagar we have 'duta' (vide Corpus I. I. vol. I p. 67).

✕ दूतक—A high officer or delegate who conveys the king's command about the grant of land to local officers. The word occurs in the Betul plate of Saṅksobha in 199 Gupta year (Gupta Ins. pp. 286-289), and in the plate of Mahārāja Jayanātha of Gupta year 174 (Gupta Ins. No. 26 p. 117 at

p. 119 where the 'dūtaka' is Uparikādīkṣita Sarvadatta), in the Banskhera plate of Harṣa in E. I. IV p. 208 (dūtakotra mahāpramātāra-mahāsāmanta-śrī-Skandagupta) and also in the Madhuban plate of Harṣa (E. I. VII at p. 158). In the Daulatpur plate of Bhojadeva I in Harṣa *samvat* 100 the dūtaka is said to be 'Yuvarāja-Nāgabhata'. Vide also E. I. VI p. 285, E. I. VIII 287, XI p. 80. In the Khalimpur plate of Dharmapāla (in E. I. vol. IV p. 243 at p. 250) the king states that he was requested to make a grant by Mahāsāmanta-dhipati Nārāyapavarman through the Prince Tribhuvanpāla as dūtaka.

दुतप्रैषणिक—Meaning doubtful. The word occurs in the Nālanda plate of Devapāla (E. I. XVII at p. 321) and the Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306).

देशाधिकृत—(Prākṛit 'desadhikata')—Governor of a Province. The Prakrit form occurs in the Ins. of Pallava Śivaskandavarman in the year 8 (E. I. vol. I at p. 5).

✓X दोःसाधसाधनिक—Meaning doubtful. Probably means 'those who catch dangerous robbers whom it is difficult to secure'. The word occurs in the Banskhera plate of Harṣa (E. I. IV p. 208 at p. 211). The form 'duḥsādha-sāadhanika' occurs in the Sevadi plates of Oḥamāna Ratnapāla in *samvat* 1176 (E. I. XI at p. 310). Vide also E. I. XXVI at p. 206 and 'mahāsāadhanika' below.

✓ दोःसाधिक—Probably the same as above. The word occurs in the grant of Lakṣmanasena in the 3rd year of his reign (i. e. 1122 A. D.) in E. I. XII at p. 9.

द्वारिक—Doorkeeper. Vide Kautilya I. 12, Lalitavistara p. 136, Viṣṇudharmottara II. 24, 30.

✓X शरिक—Officer in charge of a city station or watch tower for collecting customs duties. 'Dranga' means either 'a town' (as in E. I. XX, No. 810 of *saka* 1509) or 'a watch station' (as in *Rajāt.* VIII. 2010). The word occurs in Valabhi plate of Dharaśena II in Valabhi *samvat* 252 (I. A. 15 p. 187), Gupta Ins. No. 38 at p. 169, Palitana plate of Simhāditya in 255 Valabhi year (E. I. XI p. 16 at p. 18), Bhavanagar plate of Dhruvasena I in Valabhi year 210 (E. I. XV p. 257), Wala plate of Guhasena (E. I. XIII at p. 339), the Navalakhi plate of Śilāditya (E. I. XI at p. 179).

✓X शङ्केश—Guardian of frontiers. Vide Stein's translation of *Rajāt.* vol. II pp. 291-292 for the meaning of 'dranga'.

✓ द्वारनाथ, द्वारपति, द्वाराधिप—Superintendent of passes leading into the kingdom (Stein). Vide *Rājat.* V. 214.

धर्ममहामात्र—Superintendent of morality. Vide *Asoka's Edicts* in *Corpus I. I.* vol. I p. 96 (first Rock edict at Girnar).

धर्माधिकरण—Judge. Vide *Viṣṇudharmottara* II. 24, 24-25.

धर्माधिकरणिन्—Judge. Vide *Matsyapurāṇa* 215. 24 and note 167 above.

धर्माज्यक्ष—Vide p. 126 above.

धुव—Collector of the royal share of grain. The word occurs in the *Bhinmal Ins.* of *śūrat* 1320 (*Bombay Gazetteer*, vol. I part 1 p. 477).

धुवाधिकरणिन्—Probably the same as above. The word occurs in *Gupta Ins.* No. 38 pp. 164-166 (*Māliya plate* of *Dharaśena* II in *Gupta year* 252), the *Wala plate* of *Guhāsena* (E. I. VII at p. 339 of *Valabhi year* 246).

✓ नगरपति—City Prefect. The word occurs in the *Śīlāra grant* of *śaka* 1016 (*I. A.* vol. 9 p. 33 at p. 35).

✓ नगरव्यावहारिक—City Magistrate. Vide *Kautilya* I. 12 for *Pauravyāvahārika* and note 147 on p. 112 above. The word 'Nagalaviyohālaka' occurs in the First separate Rock Edict of *Asoka* at *Dhauli* (*Corpus I. I.* vol. I p. 92).

नगरश्रेष्ठिन्—City Banker or guild president of the town. The word occurs in the *Damodarapur plate* No. 4 of the time of *Budhagupta* (E. I. XV at p. 115) and in the *Paharpur plate* (E. I. XX at p. 63).

✓ नगराधिकृत or नगराधिप—City prefect. Occurs in *Rājat.* IV. 81, VI. 70, VIII. 3334.

नरपति—Exact function doubtful. The word occurs in the plate of *Jayacandra* of *Kanoj* in *śūrat* 1225 (*I. A.* vol. 15 p. 6 at p. 7) and in the *Panchobh plate* of *Saṅgrāmagupta* in *JBORS.* vol. V p. 582 at p. 588.

✓ नागरक—Chief Officer of the city. The word occurs in *Kautilya* II. 36, *Kāmasūtra* V. 5. 9 (the com. on which explains *nāgaraka* as *daṇḍapālaka*). Vide p. 149 above for his functions.

✓ नागरिक—Chief of the police. The word occurs in the *Vikramorvaśya* V (after verse 4), the *Daśakumāracarita* II pp. 58 and 59. The *Vaijayanti* explains the word as 'kāśapati' (Jail Superintendent).

नायक—Head of (ten) villages. The word occurs in Kautilya I. 12, Śukra I. 192.

नियुक्त—An officer, whose exact function is not known. The word occurs in the grant of Karka dated *śaka* 746 (E. I. XXIV p. 77 at p. 84), in the Kauthem plate of Vikramāditya V dated *śaka* 930 (I. A. vol. 16 p. 15 at p. 24), in the Rajor Ins. of Mathanadeva dated *śamvat* 1016 (E. I. III p. 263 at p. 266).

निहेल्पति—Governor of some part of a kingdom. In Chamba Ins. No. 15 p. 164 at p. 166 we read in Vīdagdha's plate 'Visaya-pati-nihelapati-ksatrapa'. Vide Vogel p. 124. In Gupta Ins. No. 80 p. 286 at p. 289 the 'dūta' of the grant is 'nihila-pati' Kuśala-prakāśa. So 'nihila' and 'nihela' probably mean the same thing.

नैमित्तिक—Probably 'soothsayer or astrologer'. The word occurs in the plate of Candradeva of Kanoj of *śamvat* 1148 (E. I. IX p. 302 at p. 305).

पञ्चकुल—An officer over a certain number of villages. The word occurs in the grant of Arjunadeva of Anahillapāṭaka in Vikrama year 1320 (I. A. vol. 11 at p. 242, where we read 'Śrī-Abhayasīhaprabhṛti-pañcakulapratipattau'), in the Bhinmal Ins. No. 12 dated *śamvat* 1333 (Bombay Gazetteer vol. 1 part I p. 480) where we read 'tan-niyukta-mahā-Gajasīha-prabhṛti-pañcakula-pratipattau'. In E. I. XXIV at p. 89 (in an Ins. from Udaipur) we have a Pañcoli of the Gughāvata family. Here, it appears that 'pañcakula' was a board of officers of whom Gajasīha was one (or the chief). Vide महापाञ्चकुल below.

पञ्चाङ्गली—A board of five officers or a *pañcayat*. The word occurs in the Sanchi Stone Ins. of Candragupta II in Gupta year 93 (vide Gupta Ins. No. 5 at p. 31).

पट्टिक—Village headman. The word occurs in the Malva plates of Vākpatirāja in *śamvat* 1031 and 1078 (I. A. vol. 6 at pp. 51 and 53), in the Māndhātā plate of Jayasīha of Dhārā in *śamvat* 1112 (E. I. vol. III p. 46 at p. 48), in the plate of the Paramāra king Udayavarman of *śamvat* 1256 (I. A. vol. 16 p. 252 at p. 254). Vide p. 154 above for other references.

पट्टोपाध्याय—Recorder of official documents. Vide Rajat. V. 397.

पञ्चित—Vide note 150 above.

✓ **पिस्तनेत्रिक**—probably means 'an officer who drives away undesirable persons with a cane'. The word occurs in the plate of Mahābhavagupta I (E. I. XI p. 93 at p. 94).

पंडिकावित—Meaning uncertain. The word occurs in the Belava plate of Bhojavarmadeva (E. I. XII p. 37 at p. 40).

✓ **पुरुष**—means 'inferior servant' (as in Kautilya II. 5) or a bailiff attached to a Court of justice (as in Br.). Vide p. 278 above.

पुरोहित—Vide pp. 111-112 and 117 above. The purohita occurs in the list of functionaries in the Candrāvati plate of Candradeva of Kanoj in *śāhāt* 1148 (E. I. IX at p. 305) and in the grant of Lakṣmanasena (E. I. XII p. 6 at p. 9).

पुस्तपाल—Keeper of land records. The word occurs in the Damodarpur plates dated Gupta year 124 and 129 (E. I. XV p. 113, at p. 130) and in the Paharpur plates (E. I. vol. XX. p. 61).

✓ **पारव्यावहारिक**—Vide p. 112 note 147 above. Compare 'nagala-vyohālaka' above under 'nagara-vyāvahārika'.

प्रतिनर्तक—Herald. This word occurs in Gupta Ins. No. 39 p. 171 at p. 190 dated 766-67 A. D. (The words are 'tan-niyukta-pratinartaka-kulaputrāmātya-Guhena').

प्रतिनिधि—Vide note 150 above.

प्रतिहार—Chamberlain or 'inditer of grants'. In Nasik Ins. No. 5 the word *pratihāra* (pratihāra) occurs (E. I. VIII p. 73). Brhaspati quoted by Viśvarūpa on Yaj. I. 307 states the qualifications of a 'pratihāra'. Vide Ādiparva 85, 28-29, Viṣṇudharmottara II. 24, 12, Śukra I. 121 for definitions. In the grant of Dhruvasena dated Valabhi year 206 the *dūtaka* of the grant is *pratihāra* Mammaka.

प्रतीहार—Same as above. The form occurs in the Vasantagadh Ins. of Varmalāta (E. I. IX. p. 187 at p. 192), in the Candrāvati plate of Candradeva of Kanoj in *śāhāt* 1148 (E. I. IX at p. 305); in E. I. IX p. 117 at p. 119 Paramāra king Jayavarṇa II causes *pratihāra* Gaṅgadeva to give a village to three brāhmaṇas (in *śāhāt* 1317).

प्रथमकान्वय—Chief scribe. The word occurs in the Damodarpur plate 1 of Kumāragupta in Gupta year 124 (E. I. XV at p. 130).

✓ **प्रेक्ष**—Police Magistrate. Vide Kautilya I. 12, IV. 1, IV. 10 (last verse). The word occurs in the Irda plate of the

Kamboja king Nayapāladeva (of about the 10th century) in E. I. XXII. pp. 150 at p. 156.

प्रधान—Vide note 150 above. The word occurs in the Śilāra plate of Mahāmaṇḍaleśvara Anantadeva (I. A. 9 p. 33 at p. 35 where 'mantrin', 'amātya' and 'pradhāna' are mentioned).

✓ प्रमातर—Vogel (pp. 122-123) holds that this officer was concerned with the administration of justice. The word occurs in the Banskhera plate of Harṣa (E. I. IV p. 208 at p. 211).

✓ प्रमातृ—Probably 'civil judge'. The word occurs in the Nālandā plate of Devapāla (E. I. XVII at p. 321) and in the grant of Dhruvasena III in the Gupta year 334 (E. I. vol. I p. 85 at p. 88). Vide also E. I. vol. I at p. 115.

प्रवेशभाषिक—Meaning doubtful. Stein conjectures that he is a subordinate officer of the treasury who received cash payments. The word occurs in Rājat. VIII. 278.

✓ प्रशास्त्र—Probably chief magistrate. The word occurs in Kauṭ. I. 12; vide p. 112 n. 147 above.

प्राणचर्य—Medical adviser to the king. Vide Viṣṇudharmottara II. 24. 33-34 for his qualifications.

✓ प्राह्विवर—Chief Justice. Vide Manu IX. 234 and p. 272 above.

प्रतिलारक—Meaning doubtful. The word occurs in the Valabhi grant of Dharaśena II dated Gupta year 252 (I. A. 15 p. 187).

प्रदेशिक—(प्रदेसिक)—An officer under Asoka, probably the same as the mahāmātra. The word occurs in the 3rd Rock Edict of Asoka at Girnar (Corpus I. I. vol. I. pp. 4-5).

प्रान्तपाल—Governor of a Province or guardian of the frontiers. The word occurs in the Bhagalpur plate of Nārāyaṇapāla (I. A. vol. 15 p. 304, at p. 306) and in 'Antiquities of Chamba' Ins. No. 15 at p. 166. Vide Vogel p. 124.

प्रायोपवेशाधिकृत—Officer who watched those that had resolved to fast unto death. Vide Rājat. VI. 14.

✓ बलाधिकृत—Commander of an army. The word occurs in the Kādambari (para 74) of Bāṇa (where Balāhaka is so called) and in the Rāstrakūṭa (Gujarat branch) grant of Śaka 679 (J. B. B. R. A. S. vol. 16 p. 105 at p. 108 where 'balādhikṛta' follows 'senāpati').

बाह्य—A class of royal servants (as distinguished from 'antaranga'). Vide Rājat. VIII. 426, 680, 1542.

बहुपरि—Great Governor of a province. The word occurs in the grant of Lakṣmanasena (E. I. XII p. 6 at p. 9). See 'uparika' above.

भट्ट—The word occurs very frequently in conjunction with 'cāṭa' for which see above. Vide also Dudia plates of Pravara-sena II in E. I. III p. 258 at p. 261 and Banakhera plate of Harṣa (E. I. IV p. 208 at p. 211), grant of Śivaskanda-varman (E. I. vol. I. p. 2 at p. 5) where 'bhada' stands for 'bhāṭa'.

भागदुष—Vide p. 112 above.

भागदार—He who recovers the king's share of the produce of land; one of the six officers of each village, acc. to Śūkra. II. 120.

भागिक—Meaning uncertain. The word has something to do with 'bhāga' and 'bhoga' which frequently occur in the Gupta Inscriptions (e. g. 'bhogabhāgam' in Gupta Ins. No. 40 at p. 194 and No. 41 at p. 198). Vide two Taḷesvara plates (E. I. XIII, p. 109 at p. 115) and 'Antiquities of Chamba' (Ins. No. 15 p. 166) where both 'bhāgika' and 'bhogika' are found. Mr. Y. R. Gupta renders it as 'owner of land'. Vide Vogel p. 130.

भाण्डागारप्रधान—The chief of the royal store-house or treasury. The word occurs in the Ambarnath Ins. of Mamvāni in sake 782 (J B B R A S. vol. 9 p. 219).

भाण्डागारिक—A storekeeper or keeper of royal treasury. The word occurs as 'bhaṇḍāgarikaya' ('bhaṇḍāgarikasya', of a store-keeper) in Nasik Ins. No. 19 (E. I. VIII p. 91) and in the Candrāvati plate of Candradeva of Kanauj dated *śaṃvāt* 1148 (E. I. IX p. 302 at p. 305).

भिवक्—King's medical adviser. Vide E. I. IX p. 302 at p. 305.

भोगपालि—Head of a district. It occurs in the Mitākṣarā on Yāj. I. 320, in E. I. IX p. 296 at p. 298 plates of Śaṅkarkagana where we read 'anyairvāgāminipati-bhogapatibhik', as contrasted with a king and in 'Antiquities of Chamba' Ins. No. 45 at p. 166.

भोगिक—Head of a district or Collector of the State share of land produce taken in kind (Bombay Gazetteer I part 1 p. 82). The word occurs in Gupta Ins. No. 21 p. 93 at p. 96 and No. 22 p. 100 at p. 104 (of the Gupta year 163), No. 23 p. 106 at p. 108 (of the Gupta year 191), in the Kavi grant of

Jayabhata about the beginning of 5th century A. D. (I. A. vol. V at p. 114), in the Taleśvara plates (E. I. XIII p. 109 at p. 117).

भोगोदरणिक्—The same as 'bhogika' above.

भोजक—A village headman or 'freeholder' (Bühler). The word occurs in the Deo Baranark Ins. of Jivitagupta II (Gupta Ins. No. 46 p. 213 at p. 216) and in the grant of Pallava Sivaskandavarman (E. I. vol. I p. 2 at p. 5).

मण्डलेय—'Lord of a mandala', a provincial governor. Vide Rājat. VI. 73, VII. 996, VIII. 1228, 1814, 2029.

मण्डलेश्वर—Same meaning as above. The word occurs frequently in the inscriptions of the Rattas of Saundatti. Vide Bombay Gazetteer, vol. 21 p. 354 and 'mahāmandaleśvara' below.

मतिसविक्—Councillor. The word occurs in the Inscription of Rudradāman. Vide p. 105 above.

मन्त्रिन्—Minister or councillor. The word occurs in Kaut. I. 8, Yāj. I. 312 and in Candrāvati plate of Candradeva of Kanoj dated *śamvat* 1148 (E. I. IX p. 302 at p. 305). Vide pp. 105-106 and n. 150 above.

महत्तक—Meaning uncertain. The word occurs as Mahāmahattaka in the Bodhi Gaya Ins. dated in the 74th year of the Lakṣmana-sena era (i. e. about 1194 A. D.) in E. I. XII p. 27 at p. 30.

महत्तम—Meaning uncertain. The word occurs in the Bhagalpur plate of Nārāyaṇapāla (I. A. vol. 15 at p. 306) and the Rajor grant of Mathanadeva in *śamvat* 1016 (E. I. III p. 263 at p. 266 where both 'mahattara' and 'mahattama' occur one after another) and in Rājat. VII. 438.

महत्तर—lit. meaning 'elder' (of a town or village). Stein on Rājat. VII. 659 translates it as 'chamberlain.' The word occurs in the Kavi plate of Jayabhata of the beginning of the 5th century A. D. (I. A. vol. V p. 114, 'rāstragrāma-mahattara'), Gupta Ins. No. 38 p. 164 at p. 169 (the Maliya plate of Dharasena II), Abhona plates of Śaṅkaragana (595 A. D.) in E. I. IX p. 297, Palitana plates of Simhāditya in the Gupta year 255 (E. I. XI pp. 16, 18), Valabhi grant of Dharasena II in Gupta year 252 (I. A. 15 p. 187). Vide also E. I. VIII p. 26 at p. 39 (śake 852), E. I. IV p. 278, 285 (śake 880), E. I. III p. 263, 266 (Vikrama year 1016), I. A.

vol. 16 p. 15 at p. 24 (śaka 930). In the Daśakumāra-carita III p. 77 there is 'janapada-mahattara'. Vide note 148 above.

महाकरणिक—Vide 'karaṇika' above. The word occurs in the Benares plate of Cedi king Karmadeva in Cedi era 793 (i.e. 1042 A. D.) in E. I. vol. II p. 297 at p. 309.

महाकर्ताकृतिक or महाकर्ताकृतिक—Meaning uncertain. The word occurs in the Bhagalpur plate of Nārāyaṇapāla (I. A. vol. 15 p. 304 at p. 306) and in the Nālandā plate of Devapāla (E. I. XVII at p. 321) and the Wala grant of Dhruvasena I in Gupta year 216 (I. A. vol. 4 p. 105).

महाकुमारमाल्य—Vide 'Kumārāmātya' above. The word occurs in the same two plates as are mentioned under 'mahākartā-kṛtika'.

महाक्षत्रप—The great *satrap* or provincial Governor. The Mathurā Lion Pillar capital (Corpus I. I vol. II p. 30 at p. 48) and the coins of Rajula are the earliest to mention this word. Vide the Mathurā stone Ins. of Sopḍāsa (E. I. IX p. 247) and Rudradāman's Ins. (E. I. VIII p. 36 at p. 44).

महाक्षपटलिक—Vide 'akṣapaṭatika' above. The word occurs in Gupta Ins. No. 39 at p. 120 (in 766 A. D.), in the Bhagalpur plate (I. A. 15 pp. 304, 316), Benares plate of Karmadeva (A. D. 1042) in E. I. vol. II p. 309, in Lakṣmanasena's grant (E. I. XII p. 91), E. I. X at p. 100 (Vikrama year 1253). In the Madhuban plate of Harṣa (E. I. VII p. 155 at p. 158) we have 'mahākṣapaṭalāśdhikarapādhdhikṛta'.

महानगणस्व—meaning uncertain. The word occurs in the Naihati grant of Ballālasena (E. I. vol. XIV p. 156 at p. 160).

✓ महातालवर—The functions of this high officer are not clear. See the Nagarjunikonda Ins. in E. I. XX at pp. 6 and 16 where a person is styled mahāsenāpati and mahātalavara. Has the word anything to do with the modern word 'talvar' meaning a sword? If it has then it would mean 'a great swordsman'. The word 'taravāri' in the sense of a double-edged sword occurs in the Yasastilaka I. p. 50.

X ✓ महादण्डनायक—Vide 'dandanāyaka' above and p. 115 note 152. In the Gupta Ins. No. 1 pp. 10, 15 Harṣena, the author of the *prataxi*, is styled sāndhivigrahika, kumārāmātya and mahādandanāyaka; vide also Gupta Ins. No. 46 pp. 213, 216, Mathurā (Kusana) Ins. of the year 74 (E. I. IX p. 242), E. I. XVI p. 330 the Kankhera stone

Ins. of the year 201 (279 A. D.?) where we read 'mahādandanāyakena sakena tridharavarmānā', in Nagarjunikonda Ins. (3rd century A. D.) in E. I. XX at p. 7; in the Wala grant of the Valabhi king Dhruvasena I in the Gupta year 216 there are five titles applied to Dhruvasena of which mahādandanāyaka is one (I. A. vol. 4 p. 105), the other four being mahāsāmanta, mahāpratihāra, mahākārtākrtika and mahārāja.

महादानपति—The great lord of gifts. The word occurs probably as a title only in the Taxila plate of Patika of the year 78 (Corpus I. I. vol. II p. 23 at p. 28).

महादानिक—Officer superintending the great gifts of the king called mahādānas. For mahādānas vide H. of Dh. vol. II pp. 869-870. The word occurs in the Kahla plate of Sodhadeva (E. I. vol. VII at p. 91).

महादेवी—The first wife of a king. The mahādevī or mahārājñī often heads the list of persons to whom royal grants are addressed. Vide Karnadeva's plate dated in 1077 A. D. (E. I. XI. at p. 141).

महादीन्याधसधनिक—Vide 'dauṣṣādhasādhnika' above. The word occurs in Nārāyanapāla's plate (I. A. 15 p. 304 at p. 306) and Devapāla's Nālanda plate (E. I. XVII p. 310 at p. 321).

महाधर्माधिकरणिक—The chief justice. The word occurs in the Benares plate of Karnadeva in A. D. 1042 (E. I. II p. 309) and also in his Goharwa plate (E. I. XI p. 139 at p. 141).

महाधर्माध्यक्ष—Vide 'dharmādhyaksa' above. The word occurs in Lakṣmanasena's grant (E. I. XII p. 6 at p. 9).

महापानकुलिक—Vide पञ्चकुल above. The word occurs in Sangrāmāgupta's Panchobh plate (JBORS. vol. V p. 582 at p. 588).

महापीलुपति—The great superintendent of elephants. Mahāpīlupati Pāsupati was the *dūtaka* of the Abhona plates of Kāṭaccuri Śaṅkaragana in Kāṭaccuri *śaṅka* 347 (i. e. 595-6 A. D.) in E. I. IX p. 296 at p. 298. The word also occurs in Lakṣmanasena's grant (E. I. XII p. 6 at p. 9).

महाप्रतिहार—Superior officer above all doorkeepers, great chamberlain. The word occurs in the Kādambarī of Bāna para 97, in the Rājat. IV. 142. It occurs in the plates of Sangamasimha (541 A. D.) in E. I. X p. 72 at p. 75, in the Jesar plate of Śilāditya in 357 Valabhi year (E. I. XXII p. 117), in Gupta Ins. No. 46 pp. 213, 216, Benares plate of Karnadeva in 1042 A. D. (E. I. vol. II p. 309).

महाप्रधान—Great Minister (or Prime Minister). A mahāpradhāna and dandanāyaka Brahmadeva is found in an ins. of Kalachurya Sankama's time in 1178 A. D. (E. I. V p. 26 at p. 28). Vide also E. I. XV p. 32 at p. 36, I. A. vol. 9 p. 33 at p. 35 (where a mahāpradhāna Mahadevalya under mahāmandalesvara Anantadeva is mentioned in *śake* 1016.)

महाप्रभु—Governor. Vide Ehūra record of 1173 A. D. (E. I. XII at p. 335).

महाप्रमत्तवार (महाप्रमातार)—Vide the Godharva plate of Karnadeva dated 1047 A. D. (E. I. XI p. 141).

महाप्रमातार—see प्रमातार above. The word occurs in the Banskhera plate of Harsa (E. I. IV p. 208) and Benares plate of Karnadeva (1042 A. D.) in E. I. vol. II p. 297 at p. 309.

✓ महाबलाधिकृत—Great commander. Vide Gupta Ins. No. 23 at p. 109 in 191 Gupta year, the same person being also the *dūtaka* of the grant; E. I. X at p. 72 (valabhi *śaśmat* 117 in Kumāragupta's reign), E. I. VI p. 294 at p. 299 (609-610 A. D.), E. I. XI at p. 83 (Maitraka grant of Gupta year 252), E. I. XII p. 30 at p. 35.

महामाण्डगारिक—Vide Bhāṇḍāgarika above. The word occurs in Karnadeva's Benares plate (in 1042 A. D.) in E. I. vol. II p. 39 and in his other plate in E. I. XI p. 141 (in 1047 A. D.). For the Mahābhāṇḍāgāra office, vide *Rajāt.* IV, 142.

महामोगिक—Vide मोगिक above. Vide Lakṣmanasena's grant in E. I. XII p. 6 at p. 9.

महामण्डलनाथ—Same as mahāmandalesvara. The word occurs in the Waghli ins. of Seuna dated *śake* 991 (E. I. II at p. 227).

महामण्डलीक—Same as the next. Occurs in Śilāra plate of Anantadeva in *śake* 1016 (I. A. vol. 9 p. 33 at p. 35).

महामण्डलेश्वर—Lord of a great territory. This title is borne by many of the Rattas of Saundatti (vide Bombay Gazetteer vol. 21 p. 354 for Belgaum), by Śilāhāra chiefs of the Konkan, by the Kadambas of Hangal and other cities and several other chiefs throughout central and south India. Vide E. I. XIII at p. 16 (for Rattas of Saundatti, 1204 A. D.), E. I. XIII p. 299 (for Kadamba Jayakesi II being so called in A. D. 1125), E. I. V p. 234 at p. 236 and p. 238, E. I. XII p. 250 (for Bhandup plates of Śilāhāra Chittarājadeva in 1026 A. D.), J B B R A S vol. 9 p. 219 (Ambarnath Ins. dated *śake* 782), I. A. vol. 12 p. 119 (Bassein plates of

Yādava Seunacandra II, śake 991), I. A. vol. 11 p. 9 for Kakatiya Mahā-Rudradeva in śake 1084, E. I. VIII p. 205 for the Vāghela chiefs Lavanaprasāda and Viradhavala being called Mahā-, E. I. XIV pp. 265-66 (Sinda chief Rācamalla II of Kurgod in śake 1095 and 1103), E. I. XIX p. 75 at p. 80 (Haihaya king Prthvideva I is styled Mahā- though he ruled over 20000 villages of Mahākosala.

महामन्त्रिन्—'Great Minister or councillor'. Occurs in the Benares plate of Cedi king Karmadeva (E. I. vol. II p. 309 in 1042 A. D.) and his Goharwa plate dated 1047 A. D. (E. I. XI p. 141).

महामहत्तक—Vide mahattaka above. The word occurs in the Bodhi Gaya Ins. dated in Lakṣmanasena year 74 (E. I. XII p. 27 at p. 30).

महामहत्तर—Vide mahattara above. The word occurs in the Purbi plate of Ganga year 149 (E. I. XIV p. 362, where we read *ajñā mahāmahattara-Sivasarmā*.

महामहन्तक—Occurs in the Kahla plate of Sodhadeva in *śamvat* 1134 (E. I. VII p. 85 at p. 91).

महामात्य—'Great or Prime Minister'. Vide note 148 above and Vogel p. 122. Occurs in Ambarnath Ins. of śake 782 (J B B R A S, vol. 9 p. 219), Bhadana plates of Śilāra Aparājita in śake 919 (E. I. III p. 267 at p. 290), plate of Karmadeva in 1042 A. D. (E. I. vol. II p. 309), I. A. vol. 11 p. 242 in Vikrama year 1320 equal to Valabhi year 945 where mahāmātyarājaka-Māladeva is said to have done all the business of the seal of Veraval Ins. of Arjunavarmadeva of Apahillapātaka and where a Mahomedan donor from Hurmuz grants some income to a *masjid* built by him, Mussulman congregations of Somanātha being appointed trustees.

महामात्र—High Officer. Vide Kautilya I. 12, V. 1 &c. and Kāmasūtra V. 5. 17, 33 and 35. The word occurs frequently in the Aśoka inscriptions e. g. the two separate Rock Edicts at Dhauri are addressed to the Mahāmātras of Tosali (Corpus I. I vol. I pp. 92, 95, 97, 99 and 175). In the Sohagpur plate (of about 300 B. C.) also the 'Mahāmātras' of 'Savasti are mentioned (E. I. XXII p. 1). In Nasik Ins. No. 22 in E. I. VIII p. 93 (about 1st Century B. C.) the word 'mahāmātepa' is interpreted as mahāmātyena in Bombay Gazetteer vol. 16 p. 592, but it is better to take it as mahāmātreṇa. Manu employs the word mahāmātrāḥ

(in IX. 359, which Medhātithi explains as 'mantrins, purohita and others', while Kulluka explains it as meaning those whose profession is to tame elephants).

महामुद्राधिकृत—Officer in charge of the Royal seal. Occurs in the grant of Lakṣmīnāṣena in E. I. XII p. 6 at p. 9.

महाराज—'King or feudatory'. This is not an official under a king, but in some inscriptions an emperor addresses his order as to a grant of land to 'mahārāja mahārājāt-mahārājaputra' &c. Vide Banākhera plate of Harṣa (E. I. IV p. 208 at p. 211).

महाराजपुत्र—'Great prince'—occurs in Benares plate of Karpadeva (E. I. vol. II p. 309 of 1042 A. D.) and his Goharwa plate in 1047 A. D. (E. I. XI p. 141) and Kahlā plate of Sodhadeva in *śaṃvat* 1134 (E. I. VII p. 85 at p. 91).

महाराज्ञी—Vide E. I. VII p. 85 at p. 91.

महाराजक—Vide I. A. vol. 18 p. 214 (of *śaṃvat* 1216).

महामुद्रपति—'Chief Master of battle arrays'. Occurs in the plate of Bhojavarmadeva in E. I. XII p. 37 at p. 40.

महाश्रेष्ठ—Great banker. Occurs in Kahlā plate of Sodhadeva (E. I. VII pp. 85, 91).

महाश्वशाल—One of the five high offices instituted by Lalitāditya of Kashmir. Vide *Rājat.* IV. 142.

महासमाचनिक—Commander of a cavalry force. Occurs in the Benares and Goharwa plates of Karpadeva (in E. I. vol. II p. 309 and E. I. XI p. 141). Kharha plate of Yaśabhakadeva (E. I. XII p. 205 at p. 213).

महासन्धिविग्रहिक—Great Minister of peace and war. Occurs in Benares plate of Karpadeva in 1041 A. D. (E. I. II p. 309).

महासन्धिविग्रहाधिकृत—Great minister of peace and war. Occurs in the Palitana plate of Dharaśena II in Gupta year 252 (E. I. XI p. 80), in plate of Buddhārāja (E. I. VI at p. 299 in 609–10 A. D.), in the Pimpri plate of Dhruvarāja (E. I. X at p. 89) in śaka 697. In the Harṣacarita (VI) Harṣa is said to have dictated his proclamation of *digvijaya* to 'Mahā...krta' who sat near him. In E. I. IX at p. 290 (plates of Saṅkaragana) and E. I. XII p. 30 at p. 35, we have 'mahāsandhivigra-hādhikarādhikṛta'.

महासाधनिक—Great Commander. Occurs in Kahlā plate of Sodhadeva in Vikrama 1134 (E. I. VII p. 85 at p. 91).

महासाधनभोग—One of five high officers instituted by Lalitāditya of Kashmir. Vide *Rajāt* IV. 142-43.

महासन्निविष्टि—Same as महासन्निविष्टि. Occurs in Gupta Ins. No. 22 p. 100 at p. 104 (the Khoh plate of Gupta year 163), the Ambarnath Ins. dated saka 782 (JBBRAS. vol. 9 p. 319), the Bhagalpur plate of Nārāyanapāla (I. A. 15 p. 304 at p. 306), E. I. XI p. 141, E. I. XII p. 6 at p. 9 (Lakṣmaṇasena's grant).

महासामन्त—Great chieftain. The Yādavas of Sindhnagara (vide E. I. II p. 217 of saka 922, I. A. 17 p. 120 of saka 948) and the Rattas of Saundatti were often so styled (Bombay Gazetteer vol. 21 p. 354). The Valabhi king Dhruvasena is called mahārāja and mahāsāmanta in E. I. XI p. 107 (in Gupta year 206) and E. I. XV at 256 (in Gupta Year 210) and E. I. XIX p. 302 and p. 304. The word occurs in the Banskhera plate of Harsa in his 22nd year i. e. about 628-29 A. D. (E. I. IV p. 208, at p. 211) and in the Madhuban plate of the 25th year of Harsa's reign (E. I. vol. I pp. 63, 67). Vide also Bhagalpur plate of Nārāyanapāla (I. A. vol. 15 pp. 304, 306), Rāstrakūṭa grant of saka 679 (JBBRAS. vol. 16 pp. 105, 108), E. I. XV p. 85 in saka 981 (where one Nāgadeva is both mahāsāmantaśhipati and dandanāyaka of Someśvara I), E. I. vol. II p. 309 (Benares plate of Karpadeva).

महासामन्ताधिपति—Probably means the same thing as महासामन्त. In E. I. IV p. 259 one Bhogadevarāsa is styled mahāsāmantaśhipati and dandanāyaka (Kelaṇvadi Ins. of the time of Someśvara I in 1053 A. D.), E. I. VI pp. 285, 292 (plate of Mahā-Dandivarman of Gujerat in saka 789), E. I. XX p. 61 (one Keśavayya is dandanāyaka and mahā- of Belvola 300 in saka 934), E. I. V p. 234, I. A. vol. 48 p. 1, E. I. IV. p. 243 at p. 250.

महासेनापति—Great Commander of armies. The word occurs in the Nasik Ins. No. 24. We have a mahāsenāpati Bhavagopa (E. I. VIII at p. 94) and in Nasik Ins. No. 3 of Vasīṭhiputa Śiripulamāvi (Bombay Gazetteer vol. 16 p. 556); in the Nagarjunikopla Ins. (of 3rd century A. D.) Chāntisiri is said to have been married to a person entitled mahāo and mahātalaṇvāra (E. I. XX p. 1 and pp. 6 and 16), in E. I. XII p. 6, 9 (Lakṣmaṇasena's grant).

मार्गपति—Guardian of frontiers or passes. Occurs in Nālandā stone Ins. of Yaśovarmadeva's time about 530 A. D. in E. I. XX pp. 37, 41.

मार्गपाल—Same as above. Occurs in Nārada quoted by the Mh. on Yāj. II. 271. Vide *dikpāla* above for the reference.

याहीक—'staff bearer', an attendant on a king. Vide Rajat. VI. 203. The word is derived from 'yastī' acc. to Pāp. IV. 4. 59 (meaning 'yastīh praharanam-asya').

युक्त—An officer, whose exact function is not known; but in the inscriptions of Aśoka it is said that *yuktas* are to receive orders from the *pariśad* (council of ministers). Vide the 3rd Rock Edict at Girnar (Corpus I. I. vol. I p. 4). The word also occurs in Kauṭilya II. 5 and 9.

युक्तक—Same as above. Occurs in the Cambay plates of Govinda IV in śaka 852 (E. I. VII pp. 26, 39) and the Karhad plates of Kṛṣṇa III of śaka 880 (E. I. IV. pp. 278, 285).

युवराज—Crown Prince. Occurs in Kauṭ. I. 12 among the 18 *tirthas*. The word occurs in the Mathurā Lion pillar capital (Corpus I. I. vol. II p. 40) and in the Candrāvati plates of Candradeva of Kanoj (E. I. IX p. 302 at p. 304).

रजुक (or लजुक) or रजुक—An officer of land survey and revenue department. The word occurs (as *rajuka*) in the 3rd Rock Edict of Aśoka at Girnar in Corpus I. I. vol. I pp. 4-5 and in E. I. XXIV p. 52 (under Vakātaka Emperor Pravarasena II).

रहस्यधिकृत—Private Secretary. The word occurs in the Pallava Śivaskandavarman's grant (E. I. vol. I p. 3 at p. 7), in the Vilavatti grant of Pallava Simhavarman (E. I. XXII p. 296 at p. 298), in a Kadamba plate (E. I. VI p. 13).

राजकुमार—A prince. Occurs in the grant of Śivaskandavarman (E. I. vol. I p. 2 at p. 3).

राजकुल—(modern Rāvaḷ or Rāul). Vide E. I. XX Appendix No. 324 for the Ins. of mahāmāndalesvara-rājakula-Rāpasīdeva in Vikrama year 1223, E. I. XXV at p. 156 Mayūra-bhañja grant (where *rājakula* Heramba is said to be the *lekhaḷa*).

राजगुरु—Occurs frequently in the Inscriptions of the Rattas of Saundatti (Bombay Gazetteer, vol. 21 p. 354 for Belgaum) and in the plate of Yādava Seunacandra (I. A. vol. 12 p. 119 at p. 120).

राजन्—Either a mere title or 'a feudatory'. This is often the first among the several persons addressed in several grants. The word occurs in Abhona plates of Śāṅkaragapa in 595 A. D. (E. I. IX p. 297), in the Candrāvati plate of Candradeva of *samvat* 1148 (E. I. IX p. 305), in Lakṣmapasena's grant (E. I. XII at p. 9). Vide Vogel p. 121.

राजन्वक्—a kṣatriya chief. It occurs in Lakṣmapasena's grant (E. I. XII p. 6 at p. 9).

राजपुत्र—lit. 'a prince', but in many inscriptions it has some technical meaning such as 'nobleman' or 'knight'. The word occurs in the Nalanda plate of Devapāla (E. I. XVII at p. 321 where the order is 'rāja-rāpaka-rājaputra-rājāmātya'), in Gupta Ins. No. 46 at pp. 213, 216, Bhagalpur plate of Nārāyanapāla (I. A. vol. 15 pp. 304, 306), in Lakṣmapasena's grant (E. I. VII p. 6 at p. 9). Vide Vogel p. 121 and Fleet's note 1 on p. 218 of Gupta Ins.

राजभेदिन्—King's banker or chief of bankers. Occurs in Com. on Yaśastilaka I p. 91. Vide note 148 above.

राजस्थानीय—Exact function uncertain. In Gupta Ins. No. 35 at p. 157 he appears to be a high officer, but a low one in Gupta Ins. No. 38 at p. 170. In the Rājat. VIII. 2618 he appears to be chief justice. Bühler in I. A. vol. V p. 207 takes the word to mean 'an officer who carries out the object of protecting the subjects'. In J. R. A. S. 1895 p. 382 rājas-thānīya Bhaṭṭī is the dūtaka of the grant. In the plates of Simhāditya in Gupta—Valabhi year 355 (574 A. D.) the order is 'rājaputra-rājas-thānīyāmātya'. Vide the Banskhera plate of Harsa (E. I. IV pp. 208, 211), Gupta Ins. No. 46 pp. 213, 216, Vasantagadh Ins. of Varmalāta in *samvat* 682 (E. I. IX p. 192), Palitana plate of Dharasena (E. I. XI p. 83), the Gujerat Rāstrakūṭa grant of sake 697 in J. B. B. R. A. S. vol. 16 pp. 105, 108, Vogel p. 122 and explanation in E. I. XI p. 176.

राजानक—A minister. The title occurs frequently in the Rājat. (vide VI. 117, 261). It was given for services to the king and survives in the form 'Rāzdān' as a family name among Kashmir brāhmanas. The word occurs in the Bhagalpur plate of Nārāyanapāla (I. A. vol. 15 pp. 304, 306), in the Parikud plate of Madhyama-rājadeva of Sailodbhava dynasty (E. I. XI pp. 281, 286). Vide Vogel p. 121 who

remarks that the vassals of the Chamba king designated themselves in this way.

राजमन्त्र—King's minister. In the Nasik Ins. No. 19 (E. I. VIII p. 91) this word occurs in the Prakrit form 'rāyāmaca'. The word also occurs in Gupta Ins. No. 46 (pp. 213, 216), Nālanda plate of Devapāla (E. I. XVII at p. 321), Bhagaipur plate of Nārāyanapāla (I. A. vol. 15 pp. 304, 306).

रानी—Queen. Vide Candravati plate of Candradeva in *śaival* 1148 (E. I. IX at p. 305), the grant of Lakṣmanasena in E. I. XII at p. 9 (the order being 'āśeṣa-rāja-rājanyaka-rājāt-rānaka-rājaputra-rājāmātya &c.) and the plate of Vijaya-sena (E. I. XV at p. 283).

राजक—A nobleman. Occurs in Nālanda plate of Devapāla (E. I. XVII at p. 321), in Lakṣmanasena's grant (E. I. XII at p. 9), in the Ins. of Kalacuri Narasimhadeva of Dāhala in Vikrama year 1216 (I. A. vol. 18 p. 214). Vīradhavalā and Layapaprasāda of the Vaghela line are styled mahāmāṇḍa-lesvara and rāpaka in Abu Ins. No. 2 dated 1123 A. D. (E. I. VIII at p. 205). Vide J. B. O. R. S. vol. V p. 582 at p. 588.

राष्ट्रक—Head of a district (on the analogy of grāmakūṭa). Vide J B B R A S vol. 16 at p. 117.

राष्ट्रपति—Ruler of a province. The word occurs in E. I. VII p. 39 in 852 A. D., in the Kariad plates of Kṛṣṇa III dated śake 880 (E. I. IV pp. 278, 285), in the Kauthem plate of Vikramāditya V in śake 930 (I. A. vol. 16 pp. 15, 24).

राष्ट्रपाल—Head of a province. The word occurs in Kaut. V. I.

राष्ट्रिक—Ruler of a province. In the Prakrit form 'ratthika' the word occurs in the grant of Śivaskandavarman (E. I. vol. 1 p. 2 at p. 5).

राष्ट्रिन—Ruler of a district or province. Vide p. 117 and note 155a above and Śāntiparva 85. 12.

रूपदर्शक—Examiner of coins. The word occurs in Kaut. II. 5, for which see note 184a. In E. I. XXII p. 30 there is a statement that in the Jogimāra inscription rūpadakṣa (rūpadarśa or rūpadakṣa ?) occurs. Prof. D. R. Bhandarkar takes it to mean 'banker'.

लिपिकर—Writer of an edict or order. The word occurs in the Brahmagiri Rock Ins. in Corpus I. I. vol. I at p. 176. Pāṇini III. 3. 21 teaches the formation of 'lipikara'.

- लेखक—Scribe or clerk in a public office. The word occurs in Nasik Ins. No. 16 and No. 26 (Bombay Gazetteer vol. 16 pp. 582 and 605), in the Visnudharmottara II. 24. 26-28, Sukra II. 120.
- लेखहारक—Letter-carrier. Occurs in Rajat VI. 310.
- लेखाधिकारि—A Secretary. Occurs in Rajat III. 206.
- विद्याविचारि—Director of education. In the Kondavidu Ins. one Śrinātha is said to have been the Vidyādhikarī of Vema in E. I. XI p. 313 at p. 314.
- विनियुक्त—An officer, whose functions are not clear. The word occurs in the Bhavnagar plate of Dhruvasena I in 529 A. D. (E. I. XV p. 256), in the Valabhi grant of Dharasena II in Gupta year 252 (I. A. vol. 15 p. 187), in the Gupta Ins. No. 38 p. 164 at p. 169 (the Malliya plate of Dharasena II in Gupta year 252), the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 pp. 304, 306).
- विनियुक्त—Same as above. The word occurs in the grant of Dharasena II in Gupta year 252 (E. I. XI pp. 80, 83), in the Nālandā plate of Devapāla in E. I. XVII at p. 321 (where the word is preceded by 'syuktaka').
- विषयपति—Ruler of a district. The word occurs in the Kavi grant of Jayabhata (I. A. 5 p. 114, in the beginning of the 5th century A. D.), in the Abhona plates of Śāṅkaragana in E. I. IX p. 297 (in 595 A. D.), in the Banakhara plate of Harsa (E. I. IV pp. 208, 211), in the Karhad plate of Kṛṣṇa III dated śaka 880 (E. I. IV pp. 278, 285), in the Bhagalpur plate of Nārāyaṇapāla (I. A. 15 pp. 304, 306), in E. I. VII p. 39 (in 852 A. D.).
- विषयेन्द्र—Same as above. The word occurs in the grant of Śivaskandavarman (E. I. vol. I at p. 5).
- वैधिहस्त—Probably elder of a vithi (a district). Occurs in a grant of Gupta year 120 (Indian Historical Quarterly vol. 19 p. 12 at pp. 15, 21).
- वैद्यायिक—'Person belonging to a military expedition'. The word occurs in Chamba Ins. Nos. 15, 25, 26. Vide Vogel p. 129.
- वेदकिल—Meaning uncertain, but it may mean 'bearer of a Viṭikā' (betel). It occurs in Chamba Ins. No. 15 at p. 166. Vide Vogel p. 128.

नेलावित्—Meaning uncertain. The word occurs frequently in the *Rājat*. (V. 226, VI 73, 106, 127).

वेलेपिक—Function unknown. It occurs in E. I. XXVI at p. 206 (six Saindhava grants from Ghumli) of about 9th century A. D.

भयवहसिन्—Meaning uncertain. It occurs in the plate of Jayanāga from Karga-suvarga (E. I. XVIII pp. 60, 63).

वज्रभूमिक—Superintendent of cowpens. It occurs in the 12th Rock Edict of Asoka at Girnar in the form 'vacabhūmika' (Corpus I. I. vol. I p. 20).

शय्यापाल or शय्याग्रहक—Guardian of the bed-chamber. Vide 'Inscriptions from Baroda' edited by Mr. A. S. Gadre p. 72 (a village was donated to a Nāgara-brāhmaṇa Prabhākara who was 'śayyāgrāhaka of Karpūradevi').

शरभ—It occurs in the Nalanda plate of Devapala (E. I. XVII at 321) and in Chamba Ins. No. 15 at p. 166 (where it is read as 'sarobhanga'. Vide Vogel p. 123 and 'Indian Culture' vol. VII p. 305 at p. 309. Has the word anything to do with the words 'sarayantra' and 'sarayantri'? The latter was a title bestowed in Mithilā upon a very learned man who faced the ordeal of answering satisfactorily all questions on any śāstra put to him by learned ācāryas and also the questions put by common people. Vide a paper 'Declaration of sarayantri', contributed to the All India Oriental Conference at Benares (in 1943) by Pandit Rāmānātha Jha of Darbhanga.

शुक्रप्राह—An official who recovered tolls or customs duties. Occurs in Śukra II. 120.

शौलिक—Superintendent of tolls or customs duties. The word occurs in Yaś. II. 173 and in Gupta Ins. No. 12 pp. 50, 52, in the grant of Dharasena II of Gupta year 352 (I. A. 15 p. 187), in Bhagalpur plate of Nārāyanapāla (I. A. 15 pp. 304, 306). Vide note on 'gaulmika' above.

श्रीकरण—A scribe. The minister Hemādri is styled 'sarvaśrīkaraṇa-prabhu'. Vide H. of Dh. vol. I p. 356 n. 849.

श्रीकरणाधिप or श्रीकरणाग्रणी—Head of all scribes or head of all departments. In E. I. XIII at p. 17 one Bicana or Bicirāja is said to have been the Śrīka- of mahāmāndalesvara Kārtavīrya IV of Hangal. Hemādri is styled 'samastakaraṇādhipāra' or 'samastakaraṇādhipati'. Vide H. of Dh. vol. I pp. 356-357 notes 850-851.

यज्ञाधिकृत—Officer who collected the royal share viz. 6th of the crops. It occurs in the Khalimpur plate of Dharmapala in E. I. IV p. 243 at p. 250.

सचिव—Minister. Vide p. 105 and note 150 above.

सचिवन्तक—A spy. It occurs in the grant of Śivaskandavarman (E. I. vol. I p. 2 at p. 5). In I. 12 Kautilya speaks of *sañcāras* (wandering spies like *likṣma*, *mauda* &c.).

सेनप्रीति—Vide p. 111 above.

सन्धिबिग्रहिक—Minister for peace and war. This form of the word occurs in Visnudharmottara II. 24. 17 and in Śāntiparva 85. 30.

संनिवातृ—The Superintendent of the construction of the royal treasury, store houses &c. The word occurs in Kaut. II. 5, I. 12 and in the plate of Mahābhavagupta (E. I. VIII pp. 138, 141 and E. I. XI pp. 93, 94). Vide p. 143 above.

समाहर्तृ—Collector-General. The word occurs in Kaut. I. 12 and II. 6, Śābara on Jai. XII. 1. 28 and in the plate of Mahābhavagupta (E. I. VIII at p. 141 and XI at p. 94). Vide p. 143 and note 184 above.

सर्वदण्डनायक—Commander-in-chief of all forces. The word occurs in I. A. vol. 8 p. 19, vol. 9 at p. 167, vol. 10 p. 129.

सर्वाधिकारिन्—Prime Minister. Occurs in Rajat. VII. 568.

सर्वाधिकृत—Probably the same as above. The word occurs in the Purie plate of Indravarman in the Ganga year 149 i. e. 605 A. D. (E. I. XIV pp. 360, 362).

सांक्षर—Astrologer. Occurs in Viṣṇu Dh. S. III. 75, Brhatsamhita 2. 9. Vide p. 126 above.

सांक्षरिक—Astrologer. Occurs in Paithīnasi. Vide note 193 above.

साय्यपाल—Bailiff who summoned parties and witnesses. Vide p. 278 above.

सान्धिविग्रहिक—Minister for peace and war. Occurs in Visnudharmottara II. 24. 17 and in the Mīl on Yaj. I. 320 (which quotes a verse to the effect that the 'sandhivigrahakārin' is to issue a royal grant) and in Gupta Ins. No. 1 at p. 15 (the *prastā* of Samudragupta).

सामन्त—feudatory chief. Under the Rattas of Saundatti certain high officials are often so called (Bom. Gazetteer vol. 21 p. 354 for Belgaum). The word occurs in Abhona plates of

Śaṅkaragāna in 595 A. D. (E. I. IX p. 297), in Madhuban plate of Harsa (E. I. VII at p. 158), E. I. VI p. 298 (plate of Buddhārāja in 609-10 A. D.).

साहसधिपति—Occurs in Śukra I. 120.

सीमहर्मकर—Officer who looked to the work of boundaries. Occurs in Gupta Ins. No. 46 pp. 213, 216.

सुमन्त्र—Vide p. 114 and note 150.

सुत—One of the *ratnins*. Vide p. 111 above.

सूपकास्पति—Head cook. The word occurs in Taleśvara plates (E. I. XIII pp. 109, 115).

सेनभोगिक—Meaning uncertain. It occurs in the plate of Danti-varman of Gujerat in śaka 789 (E. I. VI p. 285).

सेनापति—Commander-in-chief. Vide p. 127 above and Br. quoted by Viśvarūpa on Yaj. I. 307. Pūṣyamitra, the founder of the Śunga dynasty and Bhatārka, the founder of the Valabhi dynasty, and his son Dharaśena were styled *senāpati*; vide I. A. 15 p. 187 (plate of Dharaśena II in Gupta year 252), E. I. vol. I p. 2 at p. 5 (grant of Pallava Śivaskandavarman), JBBRAS vol. 16 pp. 105, 108, E. I. IX at p. 305.

सीवर्णिक—State goldsmith. Vide pp. 144-145 above.

स्कन्दक—A petty officer, probably head of the village administration. Vide Rājat. V. 175.

स्वयञ्जमहामात्र—Officer superintendent of the harem. The word occurs in the 12th rock Edict of Aśoka in a *prākṛit* form (Corpus I. I. vol. I at p. 20).

स्वपति—Architect. Vide Viśnudharmottara II. 24. 39.

स्वपतिसम्राट्—Chief architect. Occurs in Karīṭalai plates of Mahārāja Jayanātha (Gupta Ins. No. 26 of the Gupta year 174 at p. 119).

स्वामपाल—Officer in charge of a police post. Vide p. 149 above.

स्वानिक—An officer in charge of a ward of a city or a district. Vide pp. 143 and 149 above.

हस्त्यश्वोडबलव्याघ्रतक—Officers in charge of the elephant arm, cavalry, camel corps of an army. This occurs in Chamba Ins. No. 15 at p. 166. In the Nālandā plate of Devapāla (E. I. XVII at p. 321) we have 'hastyaśvostra-nau-bala-vyāpr-taka'.

NOTE 342a—अत एवाह पितामहः ।

छलानि चापराधांश्च पदानि नृपतेस्तथा । स्वयमेतानि यद्धीयान्नुपस्त्वानेदकैर्विना ॥
पथिमङ्गी कराक्षोर्गो प्राकारोपरिलङ्घकः । निपानस्त विनायी च तथा चावतनस्य च ॥ परि-
खापूरकश्चैव राजच्छिद्रप्रकाशकः ॥ अन्तर्गुरं वासगृहं भाण्डागारं महानसम् । प्रविशत्यनिवृत्तो
यो भोजनं च निरीक्षते ॥ दिव्यप्रच्छेपमवातानां दोषलुकांस्तु नृपप्रातः । प्रवेक्ष्यसमन्वयी नाप्य-
प्रस्थाननिरोधकः ॥ राजोऽतिरिक्तवेषश्च विरक्तः प्रविशेत्तु यः । यथापद्वारेण विधेद वेलायां
तथैव च ॥ शय्यासने पादुकायोः शयनासनरोहणम् (रोहणे ?) । राजन्यासप्रशयने वस्तिष्ठति
समीपतः ॥ राज्ञो विद्विष्टतत्री चापादत्तविहितासनः । वज्राभरणयोश्चैव सुवर्णपरिधायकः ॥
स्वयं प्राप्तेन ताम्बूलं गृहीत्वा मधवेत्तु यः । अनिवृक्तप्रभायी च नृपाकोशक एव च ॥ एक-
वासस्तवात्मनो मुक्तकेतोऽङ्गुष्ठितः । विचित्रिताङ्गः सग्वी च परिधानविधुत्कः ॥ शिरः-
प्रच्छादनयैव छिद्रान्नेषणतपरः । आसङ्गी मुक्तकेशश्च यश्च कर्णोक्षिकरीकः (वर्शकः ?) । दन्तो-
लेखनकयैव कर्णनासाविशेषकः । छलान्नेतानि पञ्चाशद्वन्ति नृपसन्निधौ ॥ quoted in
स्मृतिच. II. pp. 27-28, इकनीति. IV. 5. 73-82 (except the name and
the first verse) with variant readings.

NOTE 492—

नार्यसम्बन्धिनो मासा न सहाया न वैरिणः । न इष्टदोषाः प्रष्टव्याः साक्षिणः प्रतिद्विष्टाः ॥
दासैरेकृतिकाभाद्वृद्धस्त्रीबालवाकिकाः । मत्तोन्मत्तप्रमत्तार्तकितवप्रमयाजकाः ॥
मद्याधिक्यमासुद्विग्नप्रव्राजतातुराः । व्यङ्ग्यैकश्रोत्रिवाचार्हीतस्त्रीबकुलीलाः ॥
नास्तिकवात्यदारामित्यागिनोऽप्याज्ययाजकाः । एकस्वालीसहस्रारिचरहातिसनाभयः ॥
प्रागृष्टदोषैश्चैव विषयीष्यहिदृष्टिकाः । मरदाभिदकौनाशशत्रापुत्रौपयातिकाः ॥
क्रान्तसहस्रिकप्रान्तनिर्वमानसवाचसायिनः । भिन्नवृत्तासमावृत्तजडतैलिकमूलिकाः ॥
भूताविद्वन्पुष्टिद्वयैवैतत्प्रमुखाः । अप्रशंस्यस्वात्मविकेनुहीनाङ्गभयवृत्तयः ॥
कुन्त्री दयामा(व ?) दन्तश्च भिन्नप्रकृ शठशौण्डिकाः । ऐन्द्रजालिककुल्लोभप्रदेषीगणविरोधिनाः ॥
कण्ठकथमैक्यहृद्यः पतितः कूटकारकः । कुहकः प्रत्यवसितस्तस्करो राजपुरुषः ॥
समुत्पपशुमांसास्त्रिमज्जुक्षीराम्बुसर्पिणाम् । विक्रेता ब्राह्मणश्चैव द्विजो वार्धुषिकश्च यः ॥
च्युतः स्वयर्भात्कुलिकः स्तापको हनितेवकः । पित्रा विवदमानश्च भेदहृच्चैत्यसाक्षिणः ॥
नारद (कृष्णादान 177-187)

NOTE 509—

नम्रो मुखः कपालेन भिक्षाधी क्षुरिगमासितः । अन्धः शत्रुगृहं गच्छेद्यः साधयमनृतं वदेत् ॥ १
नम्रो मुखः कपालेन परद्वारे बुभुक्षितः । अमित्रान्भूयसः (सः ?) पश्येद्यः साधयमनृतं वदेत् ॥ २
वां रात्रिमण्डिका क्लीं वां चैवाक्षपराजितः । यां च भारामितसाहो दुर्विवक्ता स तां वसेत् ॥ ३
साक्षी साक्षे समुद्दिग्गोर्कणशेषितः वक्त्रः । सहस्रे कारुणान्पाशाङ्गुल्लोके स कण्ठनादप्राप्तम् ॥ ४
तस्य कण्ठे पूर्णं पाश एव प्रमुच्यते । तदा पाशाद्विनिर्मुक्तः क्लीं संभवति मानवः ॥ ५
एवं संकथनात्स्तान्मुच्यते मियताच्च सः । पशुगोश्वपुखाणां हिरण्यं भूर्ययाकम् ॥ ६
यावतो बान्धवास्तस्मिन् इन्ति साक्षेनृतं वदन् । तावतः संप्रवक्ष्यामि शत्रु सौम्यानुपूर्वशः ॥ ७
पञ्च पश्यते इन्ति दश इन्ति सवायुते । शतेमभ्यनृते इन्ति सदस्ये पुराणनृते ॥ ८
इन्ति जातानजाताश्च हिरण्यार्षेऽनृतं वदन् । सर्वं भूम्यनृते इन्ति मास्य भूम्यनृतं वदी ॥ ९

एकमेवाद्वितीयं तत्प्राहुः पावनमात्मनः । सर्वं स्वर्गस्य सोपानं पारावारस्य नीरिव ॥ १०
 अथमेवसहस्रं च सत्यं च तुलया श्रुतम् । अथमेवसहस्रास्तु सत्यमेव विद्याप्यते ॥ ११
 वरं कृपशताद्वापी वरं वापीशतात्कतुः । वरं कतुशतात्सुतः सत्यं पुत्रशताद्वरम् ॥ १२
 गुरोरस्यति सत्येन सत्येनोदिति भास्करः । सत्येन वायुः प्रवते सत्येनापः सन्ति च ॥ १३
 सत्यमेव परं दानं सत्यमेव परं तपः । सत्यमेव परो धर्मः लोकानामिति नः श्रुतम् ॥ १४
 सत्यं देवाः समासेन मनुष्यास्त्वृतं स्मृतम् । इदिव तस्य देवत्वं यस्य सत्यं स्थिता मतिः ॥ १५
 सत्यं ब्रह्मवृतं त्यक्त्वा सत्येन स्वर्गमेत्यसि । उक्त्वावृतं महापौरं नरकं प्रतिपत्स्यसे ॥ १६
 नरकेषु च ते शशजिह्वामुलूख्य दारुणाः । असिभिः शार्ताभ्यज्यन्ति बलिनो यमकिङ्कराः ॥ १७
 शूलैर्मैत्स्यन्ति चाकम्ब्य कोलन्तमपरायणम् । अवस्थितं समुलूख्य क्षेत्रयन्ति त्वां हुताशने ॥ १८
 अनुमूय च तास्तीवाधिरं नरकवेदनाः । इह यास्यसि पापासु रात्रिकाकादिद्योनिषु ॥ १९
 जालैस्तानवृते दोषावज्ञाना सत्यं च सत्पुणान् । सत्यं वदोद्गरात्मानं नात्मानं पातय स्वयम् ॥ २०
 न बान्धवा न सुहृदो न धनानि महान्त्यपि । अलं धारयितुं शक्तास्तमस्युप्रे निमज्जतः ॥ २१
 पितरस्त्वबलम्बन्ते त्वयि साक्षित्वमागते । तारयिष्यति किन्त्वस्मान् (किन्वस्मान् ?) किं चायं
 पातयिष्यति ॥ २२
 सत्यमात्मा मनुष्यस्य सत्ये सर्वं प्रतिष्ठितम् । सत्यमुक्त्वात्मनात्मानं श्रेयसा संनिबोधय ॥ २३
 यस्यां रात्रावजनिष्ठा यस्यां रात्रौ मरिष्यसि । कृषा तदन्तरं तुभ्यं साधवं वेदन्मया कृष्याः ॥ २४
 ब्रह्माग्रस्य तु ये लोका ये च स्त्रीबालयातिनाम् । ये च लोकाः कृतग्रस्य ते ते स्तुब्धव्रतो कृषा ॥ २५
 नास्ति सत्यात्परो धर्मो नानृतात्पातकं परम् । साक्षिधर्मं विशेषेण सत्यमेव वदेत्ततः ॥ २६
 पुराणोक्तौ द्वौ श्लोको भवतः । यः परार्थे प्रदिष्टयात्सां वाचं पुरुषाधमः । आत्मार्षं किं न
 कुर्यात्स पापो नरकनिर्भयः ॥ २७
 वाचायां नियताः सर्वे बाह्मूला दाम्बिनिधिताः । यो हि तां स्तेनयेद्वाचं स सर्वस्तेयकृद्भरः ॥ २८
 नारद (ऋणादान 201-228)

Seven verses out of these occur elsewhere also. Verse 1 is the same as Manu 8. 93 and Vas. 16. 33; verse 3 is the same as Udyoga 35. 31; verses 7-9 are the same as Manu 8. 97-99, while verses 8-9 are the same as Udyogaparva 35. 33-34 and verse 8 occurs also in Band. Dh. 8. I. 10. 35 and Vas. 16. 34; verse 11 is the same as Ādiparva 74. 103, Śāntiparva 162. 26 and Anuśāsana 75. 29; verse 25 is almost the same as Manu 8. 89.

NOTE 1168 on पटस्कोट—

कचिन्नीवतोऽधमस्यकर्मं विहितं यथा प्रागाधिरानिच्छोः पतितस्य पटस्कोटे । तथाहि । महापातकेनोपपातकेन वा पतितो यदि प्रायश्चित्तं न करोति तदा नै गुरुणा बान्धवानां राज्यं समस्तमाहूय तत्परां प्रकटीकृत्य तं पुनः पुनश्चाधिशेत् प्रायश्चित्तं कुरुवाचारं लभस्वेति । स यद्येवमपि नाहो करोति तदा रिप्तादिनिन्द्यतिथौ नायाहो सपिण्डा बान्धवाश्च सम्भूय दासी-हस्तेनानीतममेयकुसितजलादिपूजयेत् सर्वतो दास्याथन्वारम्भं कुर्वन्तो दास्या दातव्यं वा कामपादेन न्युद्वेगं क्षिप्वाप्रदग्धेषु कारयित्वा दासीसहिता वदेवुरमुममुवर्कं करोमीति नान्यग्रह-पूर्वकं प्राचीनवीतिनो मुक्तशिक्षाश्च सन्तः । ततोऽधिकारी कर्ता दाहवर्जं वीचन्तमेवोदित्य पिण्डोदकदानादिप्रेतकार्याण्येकादशहान्तावि नाम्नेव कुर्यात् । मितासुरायां प्रेतकार्यान्तरं पट-

नित्यमनुकम् । एकाहमाद्यौ च सर्वेषाम् । यस्य घटस्फोटः कृतस्तेन सह सम्भाषणस्फोटोऽपि संसर्गो न केनपि कार्यः । करणे पतितकुप्यता । वर्मेसिन्धु, परिच्छेद III, उत्तरार्धे p. 453. This is a summary of a longer passage on the same subject from the निर्णयसिन्धु, परिच्छेद III उत्तरार्धे p. 567.

As to taking back into the social fold a man who repents after ghātasphota is performed the following procedure is prescribed in the Dharmasindhu:

कृतघटस्फोटस्य पुनोन्मुक्तये तत्प्रायश्चित्तान्ते संप्रवृत्तिश्चरते । तत्रादीं क्षुदिपरीक्षा । कृतप्रायश्चित्तो जातिगम्यं गोन्वस्तृणभारं दद्यात् । गोभिस्तृणैः भक्षिते क्षुदिः । मक्षणाभावे पुनः प्रायश्चित्तं चरेत् । एवं निश्चितसंशयो समानेयुनेत्रं घटम् । हेमं वा सूम्भं वापि पवित्रजल-
पूरितम् ॥ ततः सपिण्डास्तं घटे संस्पृश्याभिमन्त्र्य तज्जलेः पापमार्गीभिरापोहिष्येयाविभिस्तर-
त्समन्दोभिश्च पापिममभिषिच्य तेन सह सर्वं स्नात्वा तं जलपटमस्मि दधुः । स च शान्ता योः शान्ता पृथिवी शान्तं विधमन्तरिक्षं यो रोचनस्तमिह गृह्णामीति यजुर्भिस्तं घटे गृह्णायात् । ततस्तदुदकं तेनैव सर्गं सर्वं पिबेयुः । ततः स कृष्णाण्डमन्त्रैराज्यहोमं कृत्वा सुवर्णं गां च दद्यात् । ततस्तस्य जातकर्मोदिव्रतवन्धान्ता विवाहान्ता वा संस्काराः कार्याः । एवं कृते क्रमेण तेन संस्पर्शसंभोजनादिव्यवाहारे कुर्यात् । एतन्प्रायश्चित्तं महाप्रायश्चित्तं च कृतघटस्फोटस्य आदि-
र्हेया । इति संक्षेपतः कृतघटस्फोटोद्धारः । वर्मेसिन्धु III उत्तरार्धे p. 454. The निर्णय-
सिन्धु (III उत्तरार्धे p. 568) has a similar but more elaborate note, quotes and relies on Gaut. 20. 10-17, Manu XI 186, Yaj. III. 295, Vas. 15. 17-21, the Mīt., Aparārka and Hemādri.

NOTE 1302—The वी. गृ. शेषम् (II 6. 1-10) is as follows:—

अथातः पुत्रप्रतिग्रहकल्पं व्याख्यास्यामः । शोणितशकसम्भवे मातृपितृनिमित्तकतस्य प्रदानपरित्यागविकल्पे मातृपितरौ कर्तारौ भवतौ न त्वेकं पुत्रं दद्यात्प्रतिगृह्णीयाद्वा स हि सन्तानाय पूर्वपाम् । न तु त्वौ पुत्रं दद्यात्प्रतिगृह्णीयाद्वा न्यत्राशुश्रूणानाद्रतुः । पुत्रं प्रतिग्रहीष्यन्तुप-
कल्पयते—द्वे वाससी द्वे कुण्डले अङ्गुलीयकं चाचार्यं च वेदपारगं कुशमर्यं बर्हिः पर्णमयमिष्म-
मिति । अथ वन्धूनां मध्ये राजनि चापेय परिषदि वागारम्ये वा ब्राह्मणान्तेन परिक्रम्य पुण्याहं स्वस्त्युद्धमिति वाचयेत्वाथ देवयजनोद्धेनप्रभृत्याग्रणीतान्यः कृत्वा दातुः समीपं यथा पुत्रं मे देशीति भिक्षेत ददामीतीति आह । ते पुत्रं प्रतिगृह्णाति धर्मीय त्वा गृह्णामि सन्तत्ये त्वा गृह्णामीति । अथैनं वस्त्रकुण्डलान्यामङ्गुलीयकेन चालकृत्वा परिधानप्रख्यामिमुखाकृत्वा पक्काश्रुहोति । 'नस्तथा इदा कीरिषा मन्यमानः' इति पुरोनुवाक्यमनूच्य 'यस्मै त्वं श्रुते जातवेदः' इति वाच्यत्वा जुहोति । अथ आज्याहुतीस्तजुहोति-ज्याहुतिभिर्हृत्वा स्विश्रुत्य-
भूति सिद्धमपेनुवरप्रदानात् । अथ दक्षिणां ददत्येते एव वाससी एते एव कुण्डले एतवाङ्गु-
लीयकम् । यथेवेहते औस्तः पुत्र उत्पद्यते तुरीयमाणेप भवतीति इ स्माह भगवान्बोधायनः ।
This is quoted in the दत्त. मी. pp. 152-153, सं. कौ. p. 177, वर्मेसिन्धु III पूर्वार्धे p. 161 (partly) and Bühler published it with a translation in the Journal of the Bengal Asiatic Society vol. 35 pp. 161-164.

NOTE 1302—

शौनकोऽहं प्रवक्ष्यामि पुत्रसङ्ग्रहमुत्तमम् । अपुत्रो सुतपुत्रो वा पुत्रार्थं समुपांश्व च ॥ १
 वाससी कुम्भले दत्ता उष्णीषं चाकुलीयकम् । आचार्यं धर्मसंयुक्तं वैष्णवं वेदपारगम् ॥ २
 मधुपर्कं संपूज्य राजानं च द्विजाञ्जनीन् । बर्हिः कुशमर्गं चैव पाशाशं चैवभवे च ॥ ३
 एतानाहृत्य बन्धून् श्रादीनाहुय बलतः । बन्धून्मेव संभोज्य ब्राह्मणांश्च विशेषतः ॥ ४
 अन्वाधानादि यत्तन्त्रं कृत्वाञ्जोत्पन्ननादिकम् । दातुः समर्था गत्वा तु पुत्रं देहीति यत्नयेत् ॥ ५
 दाने समर्थो दातास्मै ये यज्ञेनेति पयसिः । देवस्य त्वेति मन्त्रेण हस्ताभ्यां प्रतिगृह्य च ॥ ६
 अङ्गादङ्गेत्युचं जन्वा चाग्रान् शिशुमूर्धनि । बह्नादिभिरलङ्कृत्य पुत्रच्छायाग्रहं स्रुतम् ॥ ७
 कृत्यगीतैश्च वाद्यैश्च स्वस्तिप्रादयैश्च संयुतम् । शुद्धमेव तमादाय चरं जुत्वा विधानतः ॥ ८
 यस्त्वा हृदिस्था चैव तुभ्यमग्र कचैकवा । सोमो दददित्येताभिः प्रयुजं पयसिस्तथा ॥ ९
 स्विच्छक्रदादिशोभं च कृत्वा शेषे समापयेत् । ब्राह्मणानां सपिण्डेषु कर्तव्यः पुत्रसंग्रहः ॥ १०
 तदभावेऽसपिण्डो वा अन्यत्र तु न कारयेत् । अधिवाणां स्वजाती वा गुल्मोत्रसमोपि वा ॥ ११
 वैश्यानां वैश्यजातेषु शूद्राणां शूद्रजातिषु । सर्वेषामेव वर्णानां जातिष्वेव न चान्यतः ॥ १२
 दौहित्रो भागिनेयश्च शूद्रस्यापि च दीयते । ब्राह्मणादिभ्यो नास्ति भागिनेयः स्रुतः कश्चित् ॥ १३
 नेकपुत्रेण कर्तव्यं पुत्रदानं कदाचन । बहुपुत्रेण कर्तव्यं पुत्रदानं प्रयत्नतः ॥ १४
 दक्षिणां मुखे दद्याद्यथाशक्ति द्विजोत्तमः । नृपो राष्ट्रार्थमेवापि वैश्यो वित्तशतत्रयम् ॥ १५

शूद्रः सर्वस्वमेवापि अलक्षयेद्यथाबलम् । १५

The above text of Śaunaka is based on the व्यव. मयूख, नि. सि. (which does not quote all verses), दत्त. मी., दत्त. च., सं. की. and Dr. Bühler's text prepared from several mss. and published in the Journal of the Bengal Asiatic Society, vol. 35 at pp. 158-159. The शौनकीय text printed at Trivandrum, 1935, has 14½ verses on पुत्रसङ्ग्रहविधि (I. 8). The principal various readings are noted below. Verse 1—सं. की. reads 'कन्या वा मृतपुत्रा वा'; शौ. reads कन्यो वा. The half verse 3a मधुपर्कं &c. is omitted by Bühler, व्यव. मयूख, नि. सि., सं. की. In 5a दत्त. मी. and दत्त. च. read अन्वाधानादिकं तत्र, and शौ., सं. की. and Bühler अन्वाधानादि; and शौ. reads तपनान्तकम्. In 6a शौ. reads समक्षस्थो ददेत्तले. The नि. सि. omits 7b and 8a and सं. की. reads छत्र-छायागर्तं स्रुतम् in 7b and शौ. छत्रच्छायाग्रहम्. In 8b सं. की. and शौ. read शुद्धमेवैवमादाय. In 9a सं. की. and शौ. read यस्त्वा हृदिस्ति हस्ताभ्यां च and in 10a स्विच्छक्रदादिशोभं च कृत्वा शोभं. In 11b दत्त. मी., Bühler and दत्त. च. read गुल्मोत्रसमेपि. In 13a Bühler and सं. की. read दौहित्रे भागिनेयं वा शूद्राणां चापि दापयेत्; दत्त. मी. reads शूद्रेस्तु क्रियते स्रुतः and also recognizes the reading शूद्राणां विहितः स्रुतः. The स्रुतिम्. (वर्णाश्रम) p. 102 and शौ. read दौहित्रं भागिनेयं वा शूद्राणां स्थापदो यदि and omits ब्राह्मणादि... कश्चित्. 13b (ब्राह्म. ... कश्चित्) is omitted by the व्यव. मयूख., सं. की., and Bühler. In 15b सं. की. and शौ. read रत्नशतत्रयम्. The order of the verses also slightly varies in some of the works.

NOTE 1751—वनपर्व 188. 30-64

सङ्ग्रहान्ते नराः सर्वे प्रायशो नृत्वादिनः । यज्ञप्रतिनिधिः पार्थ दानप्रतिनिधिस्तथा ॥ ३०
 व्रतप्रतिनिधिश्चैव तस्मिन् काले प्रवर्तते । ब्राह्मणाः शूद्रकर्माणस्तथा शूद्रा घनार्जकाः ॥ ३१
 क्षत्रधर्मेण क्षात्र्यं वर्तयन्ति गते युगे । निवृत्तयज्ञस्थाभ्यां दण्डाजिनविवर्जिताः ॥ ३२
 ब्राह्मणाः सर्वमज्ञानं भविष्यन्ति कलौ युगे । अजपा ब्राह्मणास्तात शूद्रा जपपरावणाः ॥ ३३
 विपरीते तदा लोके पूर्वैरूपं क्षयसा यत् । बहवो म्लेच्छराजानः पृथिव्यां मनुजाधिप ॥ ३४
 नृपानुदासिनः पापा नृपादापरावणाः । आन्ध्राः शकाः पुलिन्दाश्च यवनान्च नराधिपाः ॥ ३५
 काम्बोजा बालिकाः शूरास्तथाभीरा नरोत्तम । न तदा ब्राह्मणः कश्चित्स्वधर्ममुपजीवति ॥ ३६
 क्षत्रियाणां च वैश्यानां च विक्रमेऽप्यनराधिप । अत्यायुषः स्वपञ्चलाः स्वलोवीर्यपराक्रमाः ॥ ३७
 अल्पसारात्पदेहाश्च तथा सत्यात्मभाषिणः । बहुशल्या जनपदा मृगव्यालाहता दिशः ॥ ३८
 युगान्ते समनुप्राप्ते वृथा च ब्रह्मवादिनः । भोवादिनस्तथा शूद्रा ब्राह्मणाधार्मवादिनः ॥ ३९
 युगान्ते मनुजव्याघ्र भवन्ति बहुजन्तवः । न तथा घ्राणयुक्ताश्च सर्वगन्धा विद्यापते ॥ ४०
 रसाश्च मनुजव्याघ्र न तथा स्वायुवोगिनः । बहुप्रजा हस्वदेहाः क्षीलाचारविवर्जिताः ॥
 मुलेभगाः क्षियो राजन् भविष्यन्ति युगक्षये ॥ ४१
 बहुशला जनपदाः क्षिण्यश्लथतुष्पदाः । केसशलाः क्षियो राजन् भविष्यन्ति युगक्षये ॥ ४२
 अल्पक्षीरास्तथा गावो भविष्यन्ति जनाधिप । अल्पपुष्पफलश्चापि पादपा बहुकायसाः ॥ ४३
 ब्रह्मव्यानुलिप्तानां तथा मिथ्याभिर्वासिताम् । नृपाणां पृथिवीपाल प्रतिगृह्णन्ति वै द्विजाः ॥ ४४
 लोभसोऽपरीताश्च मिथ्याधर्मचक्राहृताः । भिक्षार्थं पृथिवीपालं चञ्चुर्यन्ते द्विजैर्दिशः ॥ ४५
 करभारभयाद्रीता गृहस्थाः परिमोषकाः । मुनिच्छप्राकृतेच्छना वाणिज्यमुपजीविनः ॥ ४६
 मिथ्या च मन्त्रोमाणि श्रावयन्ति तदा द्विजाः । अर्थलोभात्तरव्याघ्र तथा च ब्रह्मचारिणः ॥ ४७
 आश्रमेषु वृथागारा पानपा मूर्खल्पगाः । इहलौकिकमोहान्ते मांसशोणितवर्धनम् ॥ ४८
 बहुपापवृत्तसङ्कीर्णो परानगुणवादिनः । आक्रमो मनुजव्याघ्र भविष्यन्ति युगक्षये ॥ ४९
 ययर्तुवर्षा मगवान् तथा पाच्छासनः । न चापि सर्वजीवानि सम्प्रमोहन्ति मास्त ॥ ५०
 हिंसानिरामश्च जगत्स्था संपश्यतेऽश्विः । अधर्मफलमत्यर्थं तदा भवति चानश ॥ ५१
 तदा च पृथिवीपालो यो भवेद्धर्मसंयुतः । अत्यायुः स हि मन्तव्यो न हि भूमौस्ति कश्चन ॥ ५२
 भूविष्टे कृतमानश्च पण्यं विक्रीयते (विक्रीयते ?) जनः (ना ?) । वाणिज्यं नरव्याघ्र
 बहुमायां भवन्त्युत ॥ ५३
 धर्मिष्ठाः परिहीयन्ते पापीयान्वर्तते जनः । धर्मस्य बलहानिः स्वादधर्मश्च कलौ तथा ॥ ५४
 अत्यायुषो दरिद्राश्च धर्मिष्ठा मानवास्तथा । दीर्घायुषः समृद्धाश्च विधर्माणो युगक्षये ॥ ५५
 नगराणां विहारेषु विधर्माणो युगक्षये । अधर्मिष्ठैरुत्तमैश्च प्रजा व्याहरन्त्युत ॥ ५६
 सशयेन तथाप्येन भवत्संशयमदान्विताः । धनं विश्वासतो व्यस्तं सिधौ भूयिष्ठशो नराः ॥ ५७
 इत्यु व्यवांसता राजन् पापाचारसमान्विताः । नैतदस्तीति मनुजा वर्तन्ते निरपत्रपाः ॥ ५८
 पुस्वादानि सत्त्वानि पक्षिणोश्च मृगास्तथा । नगराणां विहारेषु नैवेद्येष्वपि च शेरते ॥ ५९
 सप्तवर्षाष्टवर्षाश्च क्षियो गर्भेश्वरा नृप । दसद्वादशवर्षाणां पुंसो पुत्रः प्रजायते ॥ ६०
 भवन्ति योद्धवो वर्षे नराः पक्षितस्तथा । आयुःक्षयो मनुष्याणां क्षिप्रमेव प्रपद्यते ॥ ६१
 क्षीणायुषो महाराज तरुणा वृद्धास्तिनः । तरुणानां च यच्छीलं तद् वृद्धेषु प्रजामते ॥ ६२

विपरीतास्तदा नायौ वययित्वाहृतः पत्नीन् । व्युत्थरन्त्यपि दुःशीला दासैः पशभिरेव च ॥ ६३
 वीरपत्न्यस्तथा नायैः संजयन्ति नरान्द्वय । भर्तास्मपि जीवन्तमन्यान् व्यभिचरन्त्युत ॥ ६४

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विहितान्हापि कर्माणि धर्मलोपभवाद् बुधैः । १
 समयेन निवृत्तानि साधवभावात्कलौ युगे । २
 विधवायां प्रजोत्पत्तौ देवस्त्व नियोजनम् । ३
 बालिकाक्षतगोन्धोस्तु वरेणान्येन संस्कृतिः । ४
 कन्यानामसवर्णानां विवाहश्च द्विजातिभिः । ५
 क्षाततामिद्विजाध्याणां धर्मयुक्तेन द्विजनम् । ६
 द्विजस्वभाव्यौ तु नीरातुः शोभितस्यापि सङ्ग्रहः । ७
 सवदीक्षा च सर्वेषां कमण्डलुविचारणम् । ८
 महाप्रस्वानगमने गोसंज्ञमिध गोसंज्ञे । ९
 सौत्रानश्वामपि सुराग्रहणस्य च संग्रहः । १०
 अग्निहोत्रहवन्वाध लेहो लीलापस्त्रिहः । ११
 बानप्रस्थाधर्मस्यापि प्रवेशो विधिचोदितः । १२
 वृत्तस्थाप्यायसपिष्ठमघसङ्कोचनं तथा । १३
 प्रायश्चित्तविधानं तु विप्राणां मरणान्तिकम् । १४
 संसर्गदोषः स्तेवान्यमहापातकनिष्कृतिः । १५
 वरातिथिपितृभ्यश्च पशुपाकरणक्रिया । १६
 दत्तोरसेतरेषां तु पुत्रत्वेन परिग्रहः । १७
 सवर्णान्याह्वनादुष्टैः संसर्गैः शोभितैरपि । १८
 अयोनी संश्लेष्टे पुरे परित्यागो गुरुस्त्रिधा । १९
 परोद्देवात्सन्त्याग उच्छिष्टस्यापवर्जनम् । २०
 प्रतिमाभ्यर्चनायां सङ्कल्पश्च सधर्मकः । २१
 आस्तिप्रवचनादूर्ध्वमङ्गस्पर्शनमेव च । २२
 वामिजं चैव विप्राणां सोमधिक्यपणं तथा । २३
 षड्भक्तानशनेनाग्रहरणं हानिकर्मणः । २४
 क्षेत्रेषु दासगोपालकुलमिश्रार्चसौरिणाम् । २५
 भोज्याभता गृहस्थस्य तीर्थसेवातिदुरतः । २६
 शिष्यस्य गुरुदारेषु गुरुश्च वृत्तिशालिता । २७
 आपद्भूतिद्विजाग्रपाणामभस्तनिकृता तथा । २८
 प्रजार्थं तु द्विजाग्रपाणां जाताराणिपरिग्रहः । २९
 ब्राह्मणानां प्रवासित्वं मुत्ताग्रिमनक्रिया । ३०
 बलात्कारादिदुष्टस्त्रीसंश्लेष्टो विधिचोदितः । ३१
 यतेस्तु सर्ववर्णेषु भिक्षाचर्या विधानतः । ३२
 नवोदके वडाहं च दक्षिणा गुरुचोदिता । ३३

ब्राह्मणादिषु शूद्रस्य पत्न्यादिक्रियापि च । ३४
 भुवमिषतनाद्यैश्च ब्रह्मादिमरणे तथा । ३५
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A few important readings have already been noted in the text and notes there. The most extensive lists of Kalivarjyas occur in Sm. Cl., Hemādri (pariśeṣakhaṇḍa, vol. III. part 2 pp. 666-668), Par. M. vol. I part 1 pp. 134-137, Madanaratnapradīpa (Samayanirṇaya) Ms. No. 146 of Vis. collection I (now in the Govt. Mus. Library at B. O. R. Institute, Poona), Udvāha-tattva (p. 112-113) and Suddhitattva pp. 273-274 (Jiv.), Nirṇaya-sindhu, Samayamayūkha, Bhaṭṭoji on Caturvimsatimata and Smṛti-kaustubha. Detailed explanations are given in the last four of these and in Kṛṣṇabhaṭṭa's com. on the Nir. S.

2. Some works such as the कलिवर्ज्यवि. read समापने निरुत्तानि, which कलिवर्ज्यवि. explains as जनमेजययज्ञसमाप्ति and कृष्णभट्ट on नि. सि. p. 1292 explains similarly.

4. मदन्तरत्नप्रदीप (folio 209a) reads वास्तवाद्भूतयोन्वाद्य.

18. The समयप्रकाश reads 'सवर्णानां तथा दुष्टैः संसर्गः' &c.

20-21. These are omitted in स्मृतिच., परा. मा., उद्वाहृतत्त्व and some other works, though found in हेमाद्रि, भट्टोजि, कलिवर्ज्यवि. and निर्णयसिन्धु.

26. स्मृतिमुक्ताफल (आह्निक p. 447) reads भोजवाक्यता कलौ नास्ति तीर्थसेवा च दूरतः.

33. भट्टोजि and कलिवर्ज्यवि. read विधिचोदिता for मुद्रा.

38. परा. मा., समयमयूख p. 109, कलिवर्ज्यवि. and भट्टोजि read वज्रसार्य-शृङ्खलं च.

42-45. These are omitted by many of our authorities, though they occur in हेमाद्रि, समयमयूख, स्मृतिकौ., समयप्रकाश.

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